रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

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सं. 40] नई दिल्ली, सितम्बर 29—अक्तूबर 5, 2019, शनिवार/आश्विन 7—आश्विन 13, 1941
No. 40] NEW DELHI, SEPTEMBER 29— OCTOBER 5, 2019, SATURDAY/ASVINA 7— ASVINA 13, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 3 अक्तूबर, 2019

का.आ. 1762.— बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 3 की उप-धारा (2क) के दूसरे परंतुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श के पश्चात, एतद्वारा, सेन्ट्रल बैंक आफ इंडिया की प्राधिकृत पूंजी को पांच हजार करोड़ रुपए से बढ़ाकर दस हजार करोड़ रुपए करती है।

[फा. सं. 11/8/2019–बीओए-I]

ए. के. घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 3rd October, 2019

S.O. 1762.—In exercise of the powers conferred by the second proviso to sub-section (2A) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Central Government after

consultation with the Reserve Bank of India, hereby increases the authorised capital of the Central Bank of India from five thousand crore rupees to ten thousand crore rupees.

[F.No.11/8/2019-BOA-I]

A. K. GHOSH, Under Secy.

रेल मंत्रालय

(रेलवे बोर्ड)

नई दिल्ली, 18 सितम्बर, 2019

का.आ. 1763.— रेल मंत्रालय (रेलवे बोर्ड), राजभाषा नियम 1976 (संघ के शासकीय प्रयोजनों के लिए प्रयोग) के नियम 10 के उपनियम (2) और (4) के अनुसरण में पूर्व रेलवे मुख्यालय, फेयरली प्लेस, जहां 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करता है।

[सं. हिंदी 2018/रा.भा.1/12/1]

डॉ. बरूण कुमार, निदेशक (राजभाषा)

MINISTRY OF RAILWAYS

(RAILWAY BOARD)

New Delhi, the 18th September, 2019

S.O. 1763.—Ministry of Railways (Railway Board) in pursurance of Sub Rule(2) and (4) of Rule 10 of the Official Language Rules, 1976 (use for the Official purposes of the Union) hereby, notify the Eastern Railway Headquarter, Fairy Place , where 80% or more Officers/Employees have acquired the working knowledge of Hindi

[No. Hindi 2018/O.L.-1/12/1]

Dr. BARUN KUMAR, Director(OL)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 31 जनवरी, 2019

का.आ. 1764.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कार्यकारी अभियंता, केंद्रीय लोक निर्माण विभाग मुंबई, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय मुंबई के पंचाट (संदर्भ सं. 32/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 03.01.19 को प्राप्त हुआ था।

[सं. एल-42012/263/2005-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 31st January, 2019

S.O. 1764.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2006) of the Central Government Industrial Tribunal-cum-Labour Court Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to the Executive Engineer, Central Public Works Department, Mumbai & Others, and their workmen which were received by the Central Government on 03.01.19.

[No. L-42012/263/2005-IR(DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/32 of 2006

EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL PUBLIC WORKS DEPARTMENT

The Executive Engineer,
Central Public Works Department,
Goa Central Division, Bambolim,
Goa.

AND

THEIR WORKMEN

The Secretary
CPWD Mazdoor Union,
CPWD Office Compound, Bamanwade,
Vile Parle [E],
Mumbai – 400 099.

APPEARANCES:

FOR THE EMPLOYER : Mr. V. Narayanan, R. D. Rathod, Advocates

FOR THE WORKMAN : Mr. J. H. Sawant, Advocate

Mumbai, dated the 22nd November, 2018

AWARD

1. Government of India, Ministry of Labour & Employment vide its order No. L-42012/263/2005 – IR (DU-II) dated 31.05.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this tribunal for adjudication.

> "Whether the action of the Executive Engineer, Central Public Works Department, Goa Division of utilizing the services of Shri Shabir I Telsiwale on contractual basis and not regularizing the services w.e.f. 3.10.1989 is legal and justified ? If not, to what relief Shri Shabir I Telsiwale is entitled ? ''

2. After the receipt of the reference, notices were issued to both parties. In response to the notice, second party workmen filed his statement of claim Ex.7. According to the second party workman, he was employed with management of Central Public Works Department. He was selected and appointed by the management of CPWD in capacity of Motor Lorry Driver for driving the vehicles of the management. He was driving the management jeep No. CLR 4261 w.e.f. 3.10.1989. He was in continuous employment of the management. He was paid wages directly by the management. He was posted for the work at Kolhapur Central Sub-Division -1. He was paid wages at minimum rates on wages. He was not granted any other benefits which were available to the regular workman of the management attending the same and similar work of the management. He was repeatedly requesting the management to regularize his services as permanent workman of the management as done in case of other workmen placed in similar circumstances. His appointment and his continuation in service was approved and sanctioned by the competent authorities of the management from time to time by modifying the procedure of recruitment suitably for the reasons that there was ban on recruitment and therefore it was not possible for the management to follow strictly the rules of recruitment. He was qualified for the post and was appointed and continued in service by following office procedure for approval and sanction etc. His case for his regularization in service was under the active consideration of management. He was given assurance from time to time that he shall be given permanency in the employment. However, instead of regularizing his service, management continued his service and subsequently made paper arrangement that this services have been engaged through the contractor and threatened him of his dismissal from the services. As such management continued to indulge in unfair labour practice.

3. According to the applicant / union vide its letter dt. 3.5.2005 raised industrial dispute before Asstt. Labour Commissioner [Central], Ministry of Labour, Govt. of India, Mumbai over the demand for conferring upon the workman

the status and privileges of permanent workman w.e.f. 3.10.89 in the post of Motor Lorry Driver with all consequential benefits. However, conciliation ended in failure. The Central Govt. has referred dispute for adjudication to this tribunal. The workman prays that action of Executive Engineer CPWD, Goa Division in utilising services of workman on contractual basis, in not regularizing the services w.e.f. 3.10.1989 and further discontinuing the services of workman w.e.f. 1.4.2006 be declared illegal and unjustified. He also prays for restoration of his services by conferring upon him the status of permanent workman.

4. The first party management resisted the statement of claim vide its written statement Ex.8. According to them the concerned workman Shri Shabir I Telsiwale was never employed at any time by the management of CPWD. He was neither working in CPWD nor employed by the CPWD. It is submitted that Executive Engineer Goa Central Division, Goa purchased a jeep and transferred the same to the Asst. Engineer Belgaon Central Sub Division – 4, CPWD Sambra – 24 under its control in November 1989. As there was no regular jeep driver available to run the departmental vehicle, Assit. Engineer Belgaon invited quotations for running the said jeep for the period of 3 months from various local contractors. The quotations were called on regular intervals for providing the services of driving the departmental vehicles and the work orders used to be issued to the lower tenderers. One such contractor Shri Shabir I Telsiwale, concerned workman quoted his tender which was lowest @ 1000/- per month and Rs.25/- per day as night halt outside Belgaon. Accordingly, the work order was issued to the lower contractor Shri Shabir I Telsiwale for 3 months only. For every 3 months work orders for driving vehicle had been issued to the agency which had quoted the lowest rates after fresh call of quotations and the payment for providing the services had been made as per the rates in the work orders and having accepted by the agency.

5. According to the management, concerned workman was not paid wages. He was paid contractual amount as per the quotations quoted by him and work order issued to him for driving the departmental vehicle. After the 3 months period is over, such contract came to a end. As such the applicant, the concerned workman Shri Shabbir I Tashewale was never employee of the management.

6. The work allotted to the concerned workman was as a contractor and hence there is no relation in between department and Shri Shabbir I Tashewale as of employer and employee.

7. According to the management, jeep which was in service was very old running on the road from 1989 and it was almost 17 years old. In the first week of January 2006 it met with break down on the road and is not in working condition. Therefore no quotation was called after 31.3.2006 for driving the said jeep on contractual basis. It is thus contended that there was no question of restoration of services of Shri Shabbir I Tashewale. Therefore they prayed that reference be dismissed with costs.

8. This tribunal has passed the award dt. 6.2.2017 and rejected the reference with no order as to costs.

9. Second party workman challenged the award dt. 6.2.2017 before the Hon'ble H.C. by filing WP No. 686/2018. The Hon'ble H.C. quashed and set aside the impugned order and the matter is remanded to this tribunal for fresh hearing in accordance with the law. The Hon'ble H.C. directed this tribunal to decide whether or not the employee on whose behalf the reference was made was a workman u/s. 2(s) of the I.D. Act, 1947 and the contract between the parties was a contract of service or contract for service. The Hon'ble H.C. directed this tribunal to hear the parties on the basis of same evidence which was led before this tribunal and decide the reference.

10. In view of that the concerned workman submitted written arguments vide Ex.44. Learned Counsel for the first party has also advanced oral arguments in view of pleadings.

11. Following points arises for my determination and my findings thereon for the reasons to follow are as under:

Sr. No.	Points	Findings
1	Whether the concerned employee on whose behalf the reference is made was a workman u/s. 2(s) of the I.D. Act ?	No
2.	Whether the concerned employee establishes employer - employee relationship with first party?	No, not proved
3.	Is concerned workman entitled to relief sought ?	As per final order
4.	What Order ?	As per final order

Reasons

Issue No.1 & 2.

12. Admittedly the concerned workman Shri Shabbir I Tashewale was working as motor lorry driver on work order basis. It is uncontroverted that he was paid the wages through contractor since 1989. M/s. Gulmohar Construction, Solapur was the contractor. Even it is admitted that there was ban to recruit the drivers in the department in 1989. The work of driving jeep was entrusted to lowest tenderer on the work order basis for the period of 3 months. The concerned workman in the reference has quoted his tender which was the lowest @ 1000/- per month and Rs.25/- per day as night

halt outside Belgaon and accordingly the work order was issued to the said lowest contractor Shri Shabbir I Tashewale on 30.11.2089. Ex.B below Ex.19 is the chart showing the details of periodical orders issued to the agencies. It shows that Shri Shabbir I Tashewale was issued the work order from 3.10.89 to 30.9.2001 initially for the period of 3 months which was continued for every 3 months period till 30.09.2001. It shows that on 1.10.2001 till 31.03.2005 work order was issued to M/s. Gulmohar Construction, Solapur and Shri Shabbir I Tashewale. This work order was issued for 3 months during the said period and thereafter from 1.4.2005 till 31.2.2006 work orders were issued to M/s. Gulmohar Construction, Solapur, A.B. Construction, again for M/s. Gulmohar Construction, Solapur and then to A.B. Construction for every months during this period. Chart clearly shows that the work orders were issued after inviting the quotations for driving the departmental vehicle / jeep and had issued for 3 months only to the lower tenderer. Ex.C below list Ex.19 is the copy of work order dated 3.10.1989. It shows that labour charges for driving departmental jeep were fixed at Rs.1000/- per month and for 3 months which were fixed for Rs.3000/- plus extra for night halts outside Belgaon for 15 days were fixed at Rs.375/-. Total Rs.3375/- were fixed towards labour charges and extra night halts. Contractor was responsible for the cleanliness of the jeep etc. and other conditions are mentioned in the said work order. Similar were the work orders on the basis of which the concerned workman worked as driver since 3.10.89 till 31.3.2006. The question is whether it could establish employer-employee relationship of the concerned workman with first party ?

13. Here in instant case it is no doubt true that the concerned workman continuously worked from 3.10.89 till 31.3.2006 as jeep driver. He has put in 240 days service on 31.3.2006. But then the fact remains that since there was ban for recruitment, he was working on the basis of work order. After expiry of work order fresh quotations were again called and he again quoted lowest rates and fresh work order was issued to him for same work. He quoted lowest rates continuously for years together and work orders were issued to him for running the vehicle during this period. In view of that it can be said that his engagement was always for fixed 2 – 3 months and it was categorically provided so in each one of the work order given to him. Therefore non-engagement of concerned workman Shabbir I Tashewale on the expiry of period of last work order given to him did not amount to his retrenchment under section 2(oo) (bb) of the I.D. Act, 1947 it is clearly provided that termination of the service of workman because of non-renewal of contract of employment and its expiry does not amount retrenchment. In this regards hand can be led on the decision in case of M/s. Haryana State FCCW Stock Ltd. Vs. Ram Nivas AIR 2002 SC 2495 wherein the termination of service of the concerned workman on expiry of fixed period of his employment was not held to be accounting to his retrenchment despite of the fact that the workman has worked for 240 days in a year.

14. Learned Counsel for the concerned workman submitted that the issue that Second party workman is a workman or not, was never raised by the first party either before the conciliation officer or before the Hon'ble Bombay H.C. in the pleadings connected with the Second party workman. Submission is to the effect that there was a contract of service between the first party and the second party. The device has been used by the first party to give employment to the second party by issuing the work orders from time to time for the purpose of depriving the second party of the status and the privileges of the permanent workman. The first party has employed the second party for his perennial nature of work for the period from 3.10.89 to 31.3.2006. As such there was a contract of service between the first party and the second party and it was not a contract for service.

15. Submission is also to the effect that the contract for service is different from contract of service. In contract of service the employer normally enjoys the power of control over the work of the servant and the servant is bound to obey the instructions of master. On the other hand, the independent contractor undertakes to produce the required result but in casual execution of the job to produce the result is not under the order or control of the person for whom he executes the work. With this the submission is that considering the nature of the work of the concerned workman, it can be said that the second party workman Shri Shabbir I Tashewale was the workman as defined u/s. 2(s) of the act and the contract between the parties was a contract of service and not contract for service.

16. The submission is also to the effect that the services of the similarly situated workmen have been regularized by the management and the appointment of the second party workman and its continuation in service was approved and sanctioned by the authority of the first party from time to time by modifying the procedure of recruitment suitably for the reason that there was ban on recruitment and therefore it was not possible or permissible for the management to follow strictly the rules of recruitment. Submission is that the workman was qualified for the post and appointed and continued in service by following the office procedure by approval and sanction.

17. It is not possible to accept the submission that the second party workman worked on the basis of contractual work order. After expiry of the work fresh quotations were again called since he quoted the lowest rate continuously for years together the work orders were issued to him for running the vehicle during this period. His engagement was always for 2 – 3 months. There is no such evidence on record that second party workman being the independent contractor, he was under the order or control of the first party.

18. The test which is uniformly applied in order to determine the relationship is the existence of right of control in respect of manner in which the work is to be done. The distinction is also drawn between contract for service and contract of service. In one case master can order or require what is to be done while in another case he can not only order

or require what is to be done but how it shall be done. The principle which emerges from the authorities is that prima-facie test for determination of relationship between master and servant is the existence of right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also manner in which he shall do his work. The correct method approach would be to consider whether having regard to the nature of work there was due control and supervision by the employer.

19. In the present case there was ban from the government for recruitment in the year 1994 and the ban continued. Therefore workman was appointed on contract by the work order to drive the jeep and not heavy vehicles. When drivers are to be recruited, depending upon the availability of the post as per the recruitment rules the workman cannot be regularized unless ban is lifted. Even in case of similarly situated workmen management is directed to regularize the services as and when ban lifted and vacancy arises as per the rules. So far as present workman is concerned, he cannot claim the regularization on the basis of the availability of post as per rules.

20. In the context, Learned Counsel for first party management seeks to rely on decision in case of Secretary State of Karnataka Vs. Umadevi (3 & ors 2006) 4 SCC – 1. With regard to legality of the engagement of workers on daily wages by the govt. the constitution bench observed as under

> "3. A sovereign Government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages……

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons. In posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the union or of the State Government cannot but be recognized and there is nothing in the constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed…….".

21. In a nutshell, the legal position which emerges from Umadevi case (supra) can be de-lineated as under:

> "(i) the government is not precluded from engaging workers on daily wages; (ii) appointment to public posts can only be made in terms of statutory rules framed under Article 309 of Constitution of India; (iii) an employee engaged on daily wage basis cannot claim to be made a permanent employee; (iv) the courts cannot direct regularization of services of workers engaged on daily wage basis; (v) the doctrine of 'equal pay for equal work' has no application in case of regularization of services of workers engaged on daily wage basis and (vi) in cases where services of workers engaged on daily wage basis gets regularized, such workers cannot claim parity with regular employees with regard to payment of salary and other allowances for the period prior to regularization of their services."

22. In view of this legal position, the concerned workman being the contract labour cannot get regularization.

23. Even then Learned Counsel for the concerned workman submitted that in case of other workmen of the first party placed in similar circumstances, three different awards came to be passed by this tribunal and the Hon'ble H.C. vide order dt. 16.6.2004 read with order dt. 17.8.2004 in WP No. 401/2004 has been pleased to direct the first party to regularize the services of these 9 employees covered in 3 awards. Accordingly, these 9 workmen covered in 3 awards have been regularized in services w.e.f. 1.1.2004. Since the Second party workman has been placed in similar circumstances to the 9 employees covered in these 3 awards is entitled for regularization.

24. For it is explicit, that in Ref. No. CGIT-2/11 of 1997 the award came to be passed whereby it is declared that the managements action for not regularizing the services of drivers – workmen from their respective dates of the appointment is legal & justified. However, the management is directed to regularize them from the date of availability of the vacancies. The regularization should be as per seniority in their appointment and each one of the workman is entitled to all benefits from the date of regularization and not from the earlier period. Similarly in Ref. No. CGIT-2/88 of 1999 the action of the management of the CPWD in not regularizing the services of Chowdhry as Motor-Lorry Driver is held justified and management is directed to regularize his services when the ban is lifted and vacancy arises as per rules. Similarly in Ref. No. CGIT-2/97 of 1999 the action of the management of the CPWD in not regularizing the services of Sidharth Jagtap is held justified and management is directed to regularize his services if ban is lifted and vacancy arises. Similarly in Ref. No. CGIT-2/197 of 1999, wherein the action of the management is held justified. However, the management is directed to regularize his services when the ban is lifted and vacancies arise. It cannot be said therefore that in other 3 awards the services of the employees were reinstated by declaring the action of the management as un-justified. It cannot be said therefore that other 9 employees who have been placed in similar circumstances have been regularized on the ground that the action of the management was not justified. The fact remains therefore that so far as

concerned workman is concerned, he has not established employer-employee relationship and therefore it will have to be said that he was not a workman u/s. 2(s) of the act.

25. That part, if we see the evidence that has been placed on record it can be seen that admittedly in June 2006 the jeep which the concerned workman was driving, broke down. He admits that the said jeep was 17 years old jeep. Thereafter, the said jeep was scrapped and therefore quotations in respect of jeep were stopped. Admittedly the vehicle broke down during the quarter from 1.1.2006 to 31.3.2006. Break down took in the first week of said quarter. Admittedly the said such quotation was given to A.B. Construction and thereafter quotations in respect of that jeep was stopped. Obviously therefore there was no question of issuing any fresh work order in respect of that jeep and therefore it appears that his services were discontinued.

26. Learned Counsel for the concerned workman seeks to rely on the decision in case of Ramsingh & Ors. V/S. Chandigarh & Ors. – 2004 I SSC 126 to submit that the tests to be considered for determining the employer-employee relationship are

1. Control
2. Integration
3. Power of appointment & dismissal.
4. Liability to pay remuneration and deduction insurance contributions.
5. Liability to organize the work and supply tools & materials.
6. Nature of mutual obligations and
7. Terms & conditions of the contract between the parties.

27. In the instant case it has come on record that the work orders were issued on the basis of which the concerned workman worked as a driver since 3.8.89 to 31.3.06. There is no evidence that he was paid wages by the first party or the first party was deducting his contributions towards PF etc. The labour charges for driving departmental jeep were fixed at Rs.1000/- p.m. and for 3 months it were fixed for Rs.3000/- plus extra night halts outside the city for 15 days were fixed at Rs.375/- etc. He was responsible for cleanliness of jeep etc. and other conditions were mentioned in the work order. That would clearly show that he was not paid wages, nor his PF or ESI contributions were deducted from his wages at any time to establish employer-employee relationship and supervisory control etc.

28. Considering all these facts, I find that the second party workman has not established employer-employee relationship with first party management. Material placed on record amply makes it clear that the concerned workman worked on the basis of contractual work orders. He was not employed by the first party management and therefore he is not employee of first party. Issue No. 1 & 2 are answered accordingly as indicated against each of them in terms of above observations.

Issue No.3 & 4

29. In view of my findings to Issue No.1 & 2, the concerned workman is not entitled to relief of conferring upon him the status and privilege of permanent workman. He also cannot seek reinstatement. As such he is not entitled to reliefs sought. The reference is liable to be rejected with no order as to costs. Thus the order.

ORDER

Reference is rejected with no order as to costs.

Date: 22.11.2018

M.V. DESHPANDE, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1765.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधिशासी अभियंता, देहरादून केंद्रीय विद्युत प्रभाग, देहरादून और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 121/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1765.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/2016) of the Central Government Industrial Tribunal-cum-Labour Court -1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Executive Engineer, Dehradun Central Electrical Division,Dehradun & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1, ROUSE AVENUE COURTS COMPLEX : NEW DELHI.

ID No. 121/2016

Shri Monu Kumar S/o. Bhopal Singh
As represented by
All India Central PWD (MRM) Karamchari Sangathan (Regd.)
H.No. 4823, Gali No.13, Balbir Nagar Extension,
Shahdara,
Delhi 110032. …Workmen

Versus

1) The Executive Engineer,
Dehradun Central Electrical Division,
CPWD, 20 Subhash Marg,
Dehradun (0135).

2) M/s. AEE Enterprises,
C/o. The Executive Engineer,
Dehradun Central Electrical Division,
CPWD, 20 Subhash Marg,
Dehradun …Management

AWARD

This Award shall decide a claim petition directly filed by the workman Monu Kumar under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act).

2. Brief facts of the case as borne out from the averments made in the statement of claim are that the workman was appointed by the above Management as Wiremen w.e.f. 15/7/2013 and was deputed at ARC,Sarsawa site for day to day maintenance work and he had put in 240 days' regular service till the date of is termination of services on 13/4/2014 when he was verbally told that his services are terminated by the concerned Junior Engineer. The workman fulfills the conditions/eligibility criteria of recruitment rules for the post of Wireman. Neither the management of CPWD, nor the **contractors engaged for hiring the services of the workman, had paid minimum wages to the workman even though he was legally entitled for regular pay scale of post of Wireman as he was discharging the duties at par with regular Wireman till the date of his termination.** In nut shell, the case of the claimant is that he was engaged by CPWD through contractor, though contractors were/are being replaced by the Management from time to time and such contractors were used only for the purpose of making payments to the workman, whereas the workmen are working under the direct control of CPWD. Ministry of Labour, Govt. of India had issued a notification dated 31/7/2002 for complete ban on 15 posts for contract system in CPWD but despite that the principal employer CPWD engaged the workman through contractor which is unlawful as most of the times the workman was not aware as to who is his contractor/employer and when the new contract came into force. It is pleaded that act of the management in terminating services of the claimant is in violation of the provisions of Act. He has prayed for reinstatement of service with full back wages and regularization of his services under the principal employer as per judgement dated 26/5/2000 of Hon'ble High Court in CWP No.4817/99 (All India CPWD (MRM) Karamchari Sanghthan Vs. UOI and others, wherein directions were issued for not terminating the service of contractual workman even after change of contractor.

3- The claim petition has been resisted by the Management of CPWD who filed its written statement and took preliminary objections that there is no relationship of employer and employee between the parties, as the claimant is labourer of contractor to whom contract had been awarded by the Management after inviting open tenders and

completing codal provisions. The workman/claimant had neither been appointed nor recruited by the Management and as such he is not the workmen as per Section 2(S) of the Act. While denying the allegations of the claimants on merits, it has been stated that since the claimant was not appointed by the Management, so question of providing er legal facilities does not arise The workmen was working under the direct control and supervision of the contractor namely M/s AEE Enterprises. As per available record, no agreement was executed by Management of CPWDE with M/s AEE Enterprises. It is denied that the workman/claimant has completed more than 240 days in each calendar year under the Management. It is stated that contract system is not sham and camouflage and as such the workmen is not entitled either for regularization in his services or for reinstatement into service. Prayer has been made for dismissal of the claim petition.

4- Management No.2 M/s AEE Enterprises did not appear despite notice and the case was proceeded ex parte against it vide order dated 02/01/2017.

5- Rejoinder was filed on behalf of the workman wherein he reiterated the averments as made in the statement of claim and denied the allegations of the Management No.1.

6- On the pleadings of the parties, following issues were framed on 24/04/2017 :-

1) Whether there is no relationship of employer and employee between the claimant and Management No.1 ?

2) Whether termination of the claimant on 13/4/2014 is wrong and illegal and is against the principles of natural justice as alleged ?

3) Whether the claimant is entitled for reinstatement alongwith bak wages as alleged ?

7- The Claimant in support of his case examined himself as WW1 and relied on the documents Ex.WW1/1 to Ex.WW1/8, whereas the Management No.1 had examined Shri U.K.Goel, Executive Engineer (Electrical) as MW1 who also tendered his evidence by way of affidavit Ex.MW1/A and relied on the document Ex.MW1/1 (colly.).

8- I have heard Shri Satish Kumar Sharma, A/R for the claimants and Shri Atul Bhardwaj, A/R for the Management and have gone through the records carefully. My findings on above issues are as follows.

Issue No. 1 to 3 :-

9- All these issues are taken up together as they can be conveniently disposed of by common discussion.

10- During the course of arguments, learned A/R appearing for the workman strenuously argued that the the contract/agreement between the Management and the contractor/s M/s AEE Enterprises was sham and bogus because the same was against the spirit of notification Ex. MW1/W-1 issued by the Ministry of Labour. As such, the workman/claimant should be deemed to be the employee of the Management of CPWD.

11- Per-contra learned A/R appearing for the Management argued that since the claimant was not directly appointed by the Management herein and he used to get wages from the contractor/s, there existed no relationship of employer-employee between the parties. He relied on a number of judgements viz. **Workman Vs. Coates of India Ltd. (2004) 3 SCC 547; Haldia Refinery Canteen Employees Union Vs. Indian Oil Corporation Ltd;(2005) SCC 51; Balwant Rai Saluja Vs. Air India Ltd (2014) 9 SCC 407; Ram Singh Vs. Union Territory, Chandigarh (2004) 1 SCC 126; Workman of Nilgiri Coop Marketing Society Vs. State of Tamilnadu (2004) 3 SCC 4514; Union of India and another Vs. Aryulmozhi Iniarasu and others (2011) 9 SCR 1** to buttress his submission that if the contract is for supply of labour, necessarily the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor.

12- There is no dispute about preposition of law that the control test and organization test are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court/Tribunal is required to consider several factors vis-a-vis- who is the appointing authority, who is a paymaster, who can dismiss; how long alternative service lasts, the extent & control of supervision; the nature of the job – professional or skilled work etc. etc, which would have a bearing on the result. It would be worthwhile to first consider the evidence adduced on record by the parties to the dispute.

13- Case of the claimant/workman herein is that he was engaged/ appointed as Electrician by the Department of CPWD through contractor and was deputed at ARC, Sarasawa site for day to day maintenance work. Affidavit Ex.WW1/A of the workman is in line with the averments made in the claim petition. He has filed on record copy of the certificate showing that he had successfully completed the test/training for Electrician course from Gurjar ITC Rampur Manharan, Saharanpur (UP) as Ex.WW1/1, gate pass Ex.WW1/2 issued to him for making entry in Avition Research

Centre, Sarasawa, Saharanpur; copy of the representation dated 27/6/2014 which he had submitted to the Executive Engineer, Dehradun Central Electrical Division, CPWD for reinstatement into service as Ex.WW1/3; copy of the demand notice which the Union had sent to the Executive Engineer of CPWD as Ex.WW1/4; extract of directions of Hon'ble High Court in the matter of Rajender Lal and others Vs. UOI(, CWP No.8741 of 1998 as Ex.WW1/5; copy of Minutes of Central Advisory (Contract Labour) Board circulated vide letter dated 18/12/2001 as Ex.WW1/6 (colly.); copy of the Award dated 19/2/2014 of CGIT-I notified by the Ministry of Labour vide notification dated 7/3/2014 as Ex.WW1/7 and Ex.WW1/8. In cross examination he admitted that no appointment letter had been issued to him by Management No.1, though he claimed to have been appointed by Shri Kishan Chand, JE. He had neither made any written application for the job, nor any advertisement was published for the same. He clarified that he was appointed on 15/7/2013 and his services were terminated on 13/4/2014. He denied the suggestion that he was a contractual employee.

14- Testimony of MW1 Shri UK Goel is in conformity of the contents of the written statement. He showed his ignorance if gate pass Ex.WW1/2 was issued by Avitional Research Centre on their instructions. He admitted that Ex.MW1/W-1 is the copy of gazette notification and document Ex.MW1/W2 is the extract/copy of the complaint register. He showed his ignorance if the Manaagement of CPWD had issued any contract in favour of any contractor in the year 2013-14, or that the contractor engaged by the Management of CPWD had taken any licence from Labour Department.

15- From the pleadings of the parties and evidence adduced on record, it is manifest that the workman/claimant worked under the Management of CPWD at its Avitional Research Centre, Saraswa, Saharanpur through the contractor M/s AEE Enterprises and that is why gate pass Ex.WW1/2 was issued to him at the instance/recommendations of JE (Electricity). It is not in dispute that neither any appointment letter had been issued to him by Management No.1, nor any advertisement was published for the same by CPWD, nor he had made any written application for the job to CPWD. As such, it stands proved on record that he was not recruited/engaged directly by CPWD. Merely because gate pass Ex.WW1/2 was issued to the claimant, that would not ipso facto mean that he was the employee of CPWD. This fact is also substantiated from the representation dated 27/6/2014 (Ex.WW1/3 (colly.) which he had sent to the Executive Engineer, CPWD for reinstatement into service. In that representation, it has been clearly mentioned that **he was deputed through contractor to work at ARC, Sarasawa from 15/7/2013** and that his services were terminated on 13/4/2014. Alongwith this representation Ex.WW1/3 he had also enclosed due & drawn statement wherein also contractor's name has been given as M/s AEE Enterprises. **Perusal of the document** Ex.MW1/W-2 (colly.) which are the copies of complaint register, duly attested by Executive Engineer, CPWD, simply shows that complaints relating to electricity were attended to by the workers Deepak Kumar, Joginder, Harimohan, Shivam, Lalit etc. but the name of claimant Monu Kumar does not find mention therein. It thus stands proved on record that the workman/claimant rendered service **for a period of about nine months from 15/7/2013 to 12/4/2014 through contractor in CPWD (principal employer).**

16- Even if it is assumed for the sake of argument that the contract/agreement between the Management of CPWD & the contractor M/s AEE Enterprises was sham and bogus, in that eventuality also the workman/claimant would not ipso facto become the employee of the CPWD, inasmuch as there is nothing on record to suggest that the workman/claimant continued to work all the time under the direct or indirect control and supervision of the Management of CPWD and the contractors kept on changing from time to time. **It is therefore, held that there existed no relationship of employer-employee between the Management of CPWD and the claimant herein. However, he was the employee of M/s AEE Enterprises.**

17- Now the question arises for consideration is whether termination the claimant is illegal and in violations of the provisions of the Act.

18- It is manifest from the pleadings of the parties as well as evidence adduced on record that the claimant worked as Electrician for about **nine months from 15/7/2013 to 12/4/2014.** Testimony of the claimant that his services were illegally terminated by his employer w.e.f. 13/4/2014 without any notice has gone unchallenged and unassailed. This Tribunal has already held that there existed relationship of employer-employees between the claimant and Management No.2 M/s AEE Enterprises. Despite service Management No.2 neither caused appearance, nor rebutted the case of the claimant, nor led any evidence to rebut the case of the claimant. Since no notice or compensation in lieu of notice period was given to the claimant/s by the Management No.2, as termination of services of the claimant/workman was in violation of provisions of Section 25-F of the Act.

19- I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management No.2 has violated the provisions of Section 25-F of the Act.

20- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

21- Since there is no evidence on record that any valid notice was issued by the Management No.2 to the workman at the time of termination or in lieu of such notice, any compensation was paid to the workman, as such action of the Management in terminating the services the workman is held to be illegal and void.

22- Now the residual question is whether the workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full/partial back wages. There is nothing on record to suggest that any show cause notice or charge-sheet was issued to the claimant/workman by the Management No.2 prior to his termination. The claimant worked under the Management No.2 just for about nine months prior to the date of his termination. It is fairly settled that there are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.''

23- Having regard to the recent judicial trends and duration of service rendered by the workman/claimant, this Tribunal is of the view that an amount of Rs.1 lakh (Rupees One Lakh) appears to be just and reasonable, and same shall be paid by Management No.2 within a period three months from the date of publication of this Award, failing which the workman will be entitled to recover the same alongwith interest @ 6% from the date of publication of the Award till realization of the amount.. Award is passed accordingly in favour of the claimant and against the Management No.2.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dated : 6.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1766.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, दिल्ली नगर निगम, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 169/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुआ था।

[सं. एल-42012/89/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1766.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 169/2012) of the Central Government Industrial Tribunal-cum-Labour Court -1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, Municipal Corporation of Delhi, Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42012/89/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 169/2012

Shri Jaspal
S/o. Shri Sant Ram, Sweeper
lastly post ed at MC Primary School, "Sultanpuri,
D-B lock-I, Delhi,l
Through Municipal Employees Union, Agarwal Bhawan,
GT Road, Tis Hazari, Delhi 54.

Versus

The Management of Municipal Corporation of Delhi
Through its Commissioner, Town Hall, Chandni Chowk,
Delhi 110006 now known as
Commissioner (North), North Delhi Municipal Corporation,
4th Floor, Civil Centre, JL Nehru Marg,
New Delhi 110002.

Award

This Award shall decide a reference which was made to this Tribunal by the Appropriate Tribunal vide letter No. L-42012/89/2012-IR(DU) dated 16.1.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of MCD in termination the services of Shri Jaspal s/o. Shri Sant Ram from 31/1/2007 is justified or not ? If not, what relief will be given to the workman and from which date?'

2. Both parties were put to notice and the claimant filed statement of claim, with the averments inter-alia that the workman./claimant joined into the employment of Management w.e.f. 30/7/198989 as a Sweeper. He was initially engaged as a daily wager employee and was being paid only minimum wages , while his counterparts who were doing the identical work of same value, were being paid salary in proper pay scale. Services of the workman were terminated w.e.f. 4/9/2000 on the allegation that he obtained appointment fraudulently by making baseless allegations upon him. Thereafter he was re-engaged on 13/2/2002 and the Management again terminated his services we..f. 31/1/2007 in illegal manner inasmuch as no notice or notice pay was given to him and that the management has also not displayed any seniority8 list at the time of termination of his services and as such termination of services of the claimant was in

violation of provisions of Section 25-F, G and H of the Act read with Rules 76 to 78 of the Industrial Dispute (Central) Rules, 1957. No memo or chargesheet was given to the workman, nor any domestic enquiry was conducted against him prior to termination of his services. It is pleaded that though in the termination letter issued to the workman, Management has mentioned that in pursuance of final order given by Hon'ble High Court of Delhi in CWP No.1675/2000 titled as Azad Kumar Vs. MCD, the respective re-engagement letters issued of the respective workmen were stand withdrawn, however Hon'ble High Court had never directed to terminate the services of the workmen concerned. Even otherwise the said writ was not filed by the Management but was filed by the workmen concerned for regularization of their services. A demand notice was served upon the Management vide communication dated 22/5/2007 but to no response. Thereafter conciliation proceedings were also initiated but to no avail due to adamant and non cooperative attitude of the Management. It is pleaded that the claimant is unemployed since the date of his termination ie.. from 31/1/2007. . Prayer has been made for reinstatement of the workman in service with continuity of service and full back wages alongwith all consequential benefits. He has also claimed cost of litigation as provided under Section 11(7) of the Act.

3- The Management resisted the claim of the workman by filing written statement and took preliminary objections inter-alia that the dispute is not an industrial dispute as it is not properly espoused by the Union and even no demand notice has been served upon the Management. Municipal employees Union is not recognized union of the management. It is alleged that the claim is time barred as the claimant has alleged his termination on 31/1/2007, whereas the present claim has been filed in the year 2012 after lapse of five years. The claimant was never engaged as daily wager Safai Karamchari by the Management but he in connivance with scrupulous persons had obtained the engagement on the basis of a forged office order dated 2/7/1998 which was absolutely fake and on the basis of aforesaid fake order, the claimant had fraudulently worked from 30/7/1998 to 4/9/2000 and from 13/12/2002 to 31/1/2007. He was relieved vide office order dated 18/1/2007. An enquiry was conducted into the matter by the Screening Committee and after investigation into the matter it was found that in 105 cases the signatures of the Competent Authority on the office order were forged one. It is alleged that the claimant earlier had raised industrial dispute on the same issue/subect matter twice which were dismissed. Since the matter has already been adjudicated upon against the workman, hence the workman has no right to raise the industrial dispute. Prayer has been made for dismissal of claim petition.

4- On the pleadings of the parties, following issues were framed on 31/1/2014 :-

(1) Whether claimant secured his engagement as daily wager safai karamchari on the basis of forged order ? If yes, its effect ?

(2) As in terms of reference ?

4- To prove his case, the claimant examined himself as WW1 and tendered his affidavit Ex.WW1/A and relied on the documents Ex.WW1/1 to Ex.WW1/14. On the other hand, the Management examined one Smt. Neera, Assistant Director of Education, as MW1 who filed her affidavit Ex.WW1/A and relied on the documents Ex.MW1/1 to Ex.MW1/3.

5- I have heard Shri Rajiv Aggarwal, A/R for the claimant and Shri Rajiv Bhardwaj, A/R for the Management and have gone through the records carefully. My findings on the above issues are as under.

Issue No.1 :-

6- Both these issues being co-related are taken up together and same can be disposed of conveniently by common discussion.

7- During the course of hearing, learned A/.R for the Management strenuously argued that the workman/claimant had earlier also raised industrial dispute concerned his termination but same was dismissed vide Award dated 22/10/2008 (Ex.WW1/8) and 16/11/2009 (Ex.WW1/9). Perusal of the Award Ex.WW1/8 shows that joint claim petition was dismissed on technical ground, holding that joint claims can not be filed under Section 10(4-A) of the Act, whereas vide Award Ex.WW1/9 the claim petition was dismissed on the ground of limitation. To my mind, dismissal of earlier claim petition of the workman is of no help to the Management. It is pertinent to mention here that this being a reference, no limitation is prescribed for the same. Once a reference is made to the Court/Tribunal by the Appropriate Government, same is required to be answered.

8- As per the case of the claimant/workman, he had joined into the employment of the Management on 30/7/1988 on daily wage basis as per office order Ex.WW1/4. Services of the workman were disengaged on 4/9/2000 vide office order Ex.WW1/5 on the allegation that he had obtained appointment fraudulently. Thereafter he was again engaged on 13/2/2002 and his services were terminated w.e.f.31/1/2007. On the other hand, case of the Management is that the claimant was never engaged as daily wager Safai Karamchari by the Management but he in connivance with scrupulous persons had obtained the engagement on the basis of a forged office order dated 2/7/1998 which was absolutely fake and on the basis of aforesaid fake order, the claimant had fraudulently worked under the Management. He was relieved vide office order dated 18/1/2007.

9- I may mention that onus was upon the Management to prove the fact that the claimant had secured his engagement on the basis of forged order. The version of the claimant in his affidavit Ex.WW1 is in line and reiteration of the averments made in the claim petition. In his cross examination the workman/claimant explained that he is educated upto 6th class and he had moved an application in the Head Office at the time of his appointment but does not have copy of the same. He denied the suggestion that he had got job on the basis of forged order Ex.WW1/4. MW1 Smt. Neera testified that the Screening Committee of the Management had found that in 105 cases, signatures of the Competent Authority on the office order were forged one and were not of concerned DEO/AEO. She has filed on record copy of the enquiry report as Ex.MW1/1 wherein name of the claimant appears at Sl.No.87. In her cross examination she admitted that the claimant joined as a sweeper on 30/7/1988 and no notice was given to the workmen before his termination. Though she deposed that 105 workers were found to be engaged on fake orders and workman/claimant was one of them, but she could not say whether the workmen concerned were joined in the said enquiry or any notice was issued to him or not. There is no record to show that statement of workmen concerned was recorded.

10- I may mention that it is not the case of the Management that the workman /claimant had secured job on daily wage basis by filing fake or fabricated documents rather its case is that he secured job on fake order. MW1 has admitted that the opinion of handwriting expert was not obtained in the said enquiry. The Management has not disclosed as to who was the Officer/official who facilitated issuing fake order of engagement of workman/'claimant as sweeper on daily wage basis in the year 1988. Even if it is presumed that the workman/claimant was engaged on the basis of fake order in the year 1988, in that eventuality also the claimant/workman can not be blamed rather the Officer/official who facilitated issuing fake order of engagement was liable for action. Be that as it may it has come on record that services of the claimant were discontinued/terminated on 4/9/2000 on the basis of enquiry report Ex.MW1/1 (dated 28/7/200) and office note dated 8/8/2000. It has also come on record that the claimant/workman was re-engaged on 13/2/2002 meaning thereby he was given fresh appointment/engagement. Once the workman/claimant was re-engaged by the Management on its roll either on daily wage basis or as a casual/muster roll employee, his engagement in 1988 on the basis of fake order was of no consequence more so when he himself was not instrument in issuing the fake order. The workman/claimant continued to work under the Management continuously from 13/2/2002 upto 31/1/2007. Thus, it emerges from record that the workman/claimant had worked under the Management for over 240 days in calendar year prior to his termination w.e.f.31/1/2007. MW1 has admitted in her testimony that no notice in writing was given to the workman before his termination. No charge sheet or memo was issued to the workman. Admittedly, the Management has not issued any notice to the claimant before ordering her termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

"25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

11- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law. Since there is no evidence on record that in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f. 31/1/2007 is held to be illegal and void.

12- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management from 13//2/2000 till 31/1/2007 when his services were illegally terminated.

Testimony of the workman/claimant that he is unemployed since after his termination has gone unchallanged and unassailed. The Management has not adduced any evidence to show that the workman is gainfully employed.

13- The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under : -

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) **Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages**. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

With regard to the principle to be followed by the Labour Courts/Industrial Tribunals to award back wages if order of termination./dismissal is set aside, their lordships after referring to the decision of a Bench of three Judges had laid down the law as under :- (see page 102-103 of LLR Jan.-June 2015)

> "17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position, in which he would have been but for th illegal action taken by the employee. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to be borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments. "

14- A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

15. In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay

the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

16- Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post with 60% back wages and all consequential benefits, The claimant/workman is also granted litigation costs of Rs.10,000/- (Rupees Ten Thousand only) as provided under Section 11(7) of the Act and same shall also be paid by the Management. Award is passed accordingly in favour of the claimant and against the Management.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 9.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1767.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सचिव, संगीत नाटक अकादमी नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या. 164 of 2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/100/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O.1767.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 164 of 2016) of the Central Government Industrial Tribunal -cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, Sangeet Natak Akdemy, New Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42011/100/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI – 110 002

ID No. 164 of 2016

1. Shri Dharambeer S/o. late Shri Ramesh Chand

2. Shri Jay Pal s/o. late Shri Shyam Lal, Attendants
Sangeet Natak Akademi,
Through its Secretary, Rabindra Bhawan, Feroz Shah Road,
New Delhi 110001 through
Delhi Labour Union, Agarwal Bhawan,GT Road,
Tis Hazari, Delhi 110054. …Workmen

Versus

The Management of Sangeet Natak Akademy,
Through its Secretary, Rabindra Bhawan,
Feroz Shah Road,
New Delhi 110001 …Management

AWARD

This award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-42011/100/2016/IR(DU) dated 16th August/23rd September, 2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of Sangeet Natak Akademi in not regularization the services of Shri Dharambeer Singh s/;o. late Shri Ramesh Chand and Shri Jay Pal s/o. late Shri Shyam Lal, attendants, is fair and legal ? If not, what relief the workmen are entitled to and from what date ?'

2) Both parties were put to notice and the claimants/ workmen filed a joint statement of claim with the averments that they joined into the employment of then management as Attendants w.e.f. 14/8/2005 and 25/11/2008 respectively and are getting meager salary of Rs.9500/- per month. They have been discharging their duties sincerely and honestly to the satisfaction of their superios and have unblemished & uninterrupted record of service to their credit but they are malfidely shown as employee on contract basis. Management being an apex body in performing arts of the country, is rendering advice and assistance to the Government of India in the task of formulating and implementing policies and programmes in the field. The management has illegally engaged the workmen on contractual basis though the job on which the workmen are discharging their duties is of regular and permanent nature. The Management has not taken any steps to regularize the services of t he workman in proper pay scale & allowance. Non regularization of the services of t he workmen with effect from the initial dates of their joining on the post of Attendant in proper pay scale is not totally illegal and unjust but also against the principle of "equal pay for equal work" and it amounts to sheer exploitation of labour as the workmen concerned are discharging the same duties as are being discharged by a regular employee. The workmen have acquired the status of permanent employees from the initial date of their joining into the employment after completing 90 days of continuous employment as provided in the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. A demand notice dated 15/9/2015 was served upon the Management but to no response. Thereafter the conciliation proceedings were initiated but to no avail, due to adamant & non cooperative attitude of the management. Prayer has been made for regularization of the workmen with retrospective effect from the initial date of their joining and to pay them entire difference of salary. They have also prayed for costs of litigation as provided under Section 11(7) of the Act.

3- Management resisted the Claim petition by filing written reply, stating that the claimants were engaged purely on contractual basis, as per their educational qualifications and consolidated payment to them was increased from time to time based on the increase in the Minimum Wages Act and presently they are getting salary of Rs.15000/- per month w.e.f. October, 2016. It has been denied that the claimants were engaged or employed to a post of permanent nature. It has been alleged that they were engaged purely on temporary basis for the projects as assigned by the Ministry of Culture from time to time and due break period was given to them. They were assigned with the work of messenger/attendant, diary & dispatch work etc.. No recruitment procedure as applicable to the Direct Recruitment post had been carried out for the claimants. It is also alleged that consequent upon the ban on the Group D post in the 6th Pay Commission recommendations, these posts were merged and renamed as Multi Task under Group-C category. It is stated that after following required procedure, due weightage to the claimants will be given for their long working with the Akademi and they will be considered suitably as & when posts got vacant. It is averred that the claimants have no right for regularization from the date of their initial appointment.

4- The claimants/workmen filed rejoinder reiterating their own case as set up in the statement of claim and denied the allegations of the Management as made out in the written reply.

5- In order to prove their case, the claimants examined themselves as WW1 and WW2 who filed their respective affidavits Ex.WW1/A & Ex.WW2/A and relied on number of documents Ex.WW1/1 to Ex.WW1/24. They also examined Shri Surender Bhardwaj, General Secretary of the Delhi Labour Union who proved the resolution for espousing the cause of the claimants/workmen by the Union as Ex.WW1/5. On the other hand, the Management examined MW1 Smt.Vinodi Sharma, Deputy Secretary who tendered her evidence by way of affidavit Ex. MW1/A and additional affidavit Ex.MW1/B. She placed reliance on the documents Ex.MW1/1 to Ex.MW1/3.

6- I have heard Shri Rajiv Aggarwal, learned A/R for the claimants and Shri Dharmender Kumar, A/R for the Management. I have also gone through the records carefully.

7- Case of the claimants is that they had joined as Attendants under the Management w.e.f. 14/8/2005 and 25/11/2008 respectively. Though they have been discharging their duties sincerely and honestly to the satisfaction of their superios and have unblemished & uninterrupted record of service to their credit but the Managedment have malfidely shown them to be contractual employee/s and they are deprived of wages/salary as is being paid to their regular counter-parts despite the fact that they are doing the same work. From the pleadings of the parties and evidence adduced on record, it is evident that the claimants/workmen are still working under the Management/s and there existed relationship of employer-employees between the Management and the claimants/workmen herein.

8- Short question/issue arises for consideration is as to whether the workmen/claimants who are working with the Management are entitled to be regularized to the post/s to which they are working.

9- Ld. A/R for the claimants argued that the Management/s by adopting unfair labour practice, are depriving the claimants their legitimate right of regularization and lawful dues in the regular pay scale. Per contra, learned A/R appearing for the Management strenuously argued that the claimants were engaged purely on temporary basis without following any due procedure of recruitment. The claimants being contractual employees has got no right to be appointed on permanent basis or to be regularized in service. He relied on the judgements in the case of **State of Karnataka Vs. Uma Devi 2006 (4) SCC 1; Ram, Sevak Yadav Vs. State of Bihar (2013) 1 PLJR 964 and Upender Singh Vs. State of Bihar and otrs 2018 (3) SCC 680 to** buttress his submission that irregular/illegal appointments can not be regularized.

9- There is no dispute about preposition of law that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

10- Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

11- Our own High Court in the case of **Project Director, Department of Rural Development Versus its Workmen through D.P.V.V.I.E.Union (W.P. –Civil No. 17555/2005 – decided on 29/3/2019)** after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and other Vs Uma Devi, 2006 (4) SCC 1** and of Delhi High Court in the case of **Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018**, has observed in para 27 and 29 as under :-

> 27. "In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and can neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of the present case. **Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."**
>
> **…….**

29. Thus, in the light of the observations of the Supreme Court in Ajaypal Singh (supra), ONGC (supra) and Umrala Gram Panchayat (supra) as also of this Court in Ram Singh (supra), I find that the petitioner's reliance on the decision of the Supreme Court in Uma Devi (supra) and of this Court in Anil Lamba (supra) is wholly misconceived. **In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order, directing the petitioner to regularize the respondents' services……"**

From the above rulings, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & unless **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other. However, the Industrial Tribunal is vested with powers to curb unfair labour practices being adopted by the employer/s.**

12- To decide the issue in proper perspective, it would be worthwhile to refer the oral as well as documentary evidence adduced on record. I may mention that testimony of the workmen/claimants who appeared in the witness box as WW1 and WW2 is in line with the averments made in the claim petition. They have filed on record copy of legal/demand notice dated 15/9/2015 as Ex.WW1/1 and its postal receipts as Ex.WW1/2 & Ex.WW1/3; statement of claim filed before the Assistant Labour Commissioner as Ex.WW1/4; resolution of the Union espousing their cause/dispute as Ex.WW1/5; order of engagement and subsequent orders issued by the Management regarding extension of their term as contractual employees from time to time, as Ex.WW1/6 to Ex.WW1/20 and copy of the identity card issued by the Management in favour of claimant Dharambir, Attendant as Ex.WW1/21; copies of the representation letters which the claimant Dharambir had written to the Management on 20/12/2013 and 27/2/2015 regarding regularization of his services as Ex.WW1/23 and Ex.WW1/24 respectively. In cross examination the workmen/claimants clarified that they did not have any document to show that they were engaged for a regular post by the Management, at the time of their joining. Workman Dharambeer is 10^{th} class pass whereas workman/claimant Jay Pal is 12^{th} class pass. They had made representations to the Management regarding regularization of their services, during the period from 2009 to 2015. They admitted that the Management has not regularized the services of any of the co-employees who are performing similar/identical work.

13- Testimony of MW1 Smt. Vinodi Sharma vide affidavit Ex.MW1/A is also in line with the averments made in the written reply. However, vide affidavit Ex.MW1/B, it was clarified that Shri Ashok Kumar –elder brother of claimant Dharambir had joined the Management as staff van driver on daily wage basis w.e.f. 18/8/1989 but was promoted as grade II driver w.e.f. 10/9/2000, whereas his father Shri Ramesh Chand had also been working under the Management since 3/12/1973 and he retired as Daftry on 31/7/2009. She has admitted in her cross examination that nature of work & working hours of the claimants and their counterparts who are regular employees and are paid salary in regular pay-scale, is same and identical. She was not in a position to say as to how many posts of attendant/s are lying vacant with the Management since 2005. She could not say if 5 Nos. of posts of Attendant were lying vacant at the time of her deposition. She showed her ignorance if the post of Library Attendant, Museum Attendant and Safai Karamchari were lying vacant since 30/76/2018, 28/2/2018 and 2013 respectively. She admitted that S/Shri Tika Ram, Inder Singh and Narender Ballabh who were working as Attendants have retired and since then the posts are lying vacant. She could not say if the claimants do possess the requisite qualification for the post of Attendant. She also admitted that the workers S/Shri MS Rao, Sanjay Baloni, Surender Singh, Mohan Singh, Raghunathan Pillai, Har Singh Manral and Narayan Sikngh Bora have been regularized in 1998 retrospectively from 1993. She also admitted that documents Ex.MW1/W-1 to Ex.MW1/W-53 were issued by the Management. She also admitted that work of Attendant and MTS workmen are of perennial nature with the Management. While admitting that in the office order dated 9/4/2019 (Ex.MW1/54), certain terms as para 6 to para 13 were incorporated for the first time, she showed her ignorance if the Management had taken permission from any Competent Authority before incorporation such paras (terms & conditions). She also clarified that the claimants were appointed by the Chairman .

14- It is evident that the claimants/workmen have been working as Attendants with the Management continuously but with artificial breaks, since 14/8/2005 and 25/11/2008 respectively. The post to which the claimants/workmen are working is of regular and perennial nature, which fact is admitted to by MW1 – witness of the Management. It has also come on record that S/Shri Tika Ram, Inder Singh and Narender Ballabh who were working as regular Attendants with the Management have retired and since then the posts are lying vacant. It is also evident from the evidence adduced on record that the claimants/workman are being paid consolidated wages/salary and not the regular pay-scale despite the fact that nature of work & working hours of the claimants and their counterparts who are regular employees and are paid salary in regular pay-scale, is same and identical. This clearly goes to show that the Management has deprived the workmen the status & privilege of permanent/regular employee, as the workmen working as Attendants are getting lesser than the wages/salary being paid to their regular counterparts. Employing workmen as "badlis", casuals or temporaries and to continue them as such for years together with the object of depriving them of the status & privileges of permanent

workman **amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act. I**t emerges that the Management has adopted unfair labour practice in depriving the workmen/claimants herein of the status & benefit of permanent workman and such a practice is required to be curbed.

15- It has come on record that the workmen/claimants herein have been working as Attendants continuously on contract basis for the last over 10 years but are not being paid wages as per pay-scale for their respective categories rather they are paid wages less than that being paid to their regular counter-parts. Once the workmen/claimants are doing same duties and responsibilities as are being performed by regular employees of the Management, **they are entitled to get wages at par with those of regular employees, on the principle of "Equal Pay for Equal Work".**

16- Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "**The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like).** It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. "

17- In view of the rulings and facts of the case as discussed hereinabove, it is held that the claimants are entitled to get wages in the pay-scale of Attendant/MTS,w.e.f. the date of their initial engagement, alongwith all consequential benefits

18- As regards regularization of services of the workmen/claimant, it has come on record that the claimant Dharambir is 10th class pass, whereas claimant/workman Jay Pal is 12th class pass. In the past also, the Management had regularized the services of some of the workers in 1998 – may be under some scheme/policy formulated for the purpose. The post to which the claimants/workmen are working is of regular and perennial nature. As such, this Tribunal considers it expedient in the interest of justice to direct the Management to issue orders regarding regularization of the services of claimants/workmen from the date of their initial engagement/joining, within a period of three months from the date of publication of the Award.

Award is passed accordingly in favour of the claimants and against the Management. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 5.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1768.— औद्योगिक विवाद अधिनियम , 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सचिव,संगीत नाटक अकादमी नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 212/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/163/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1768.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 212/2015) of the Central Government Industrial Tribunal-cum-Labour Court-1 New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, Department of Personnel, Non-Statutory Canteen, Government of India, New Delh & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42011/163/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1 DELHI

ID No. 212/2015

Smt. Sharda Sahotra,
C/o All India Central Government Canteen Employees Association,
F-48, Lado Sarai,
New Delhi – 110 030 …Workman

Versus

The Secretary,
Department of Personnel,
Non-Statutory Canteen,
Government of India,
North Block,
New Delhi 110 001 …Management

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/163/2017-IR(DU) dated 06.04.2018 for adjudication of an industrial dispute with the following terms:

> 'Whether the workman Ms.Sharda Shahotra entitled to promotion to the next higher level?" If yes, with effect from which date?'

2. Claim statement was filed on behalf of Ms.Sharda Sahotra (in short the claimant) averring therein that she was working as clerk with effect from 10.01.1985 and promoted as Assistant Manager cum Storekeeper in the pay scale of Rs.3200-4900 with effect from 10.09.2008. After completing 23 years of service, claimant was entitled for 2nd ACP in the pay scale of Rs.5000-8000 with effect from 10.09.2008, which was denied by the management. The scale was revised as CAT order in the pay scale of Rs.4000-6000 in the 1st ACP with effect from 22.12.2014 but the 2nd ACP after completing 24 years of service was not revised in the pay scale of Rs.9300-Rs.34,800. The Gazette notification issued by the department of Personnel, Government of India dated 27.08.2009 on page 486 is as under:

> **Manager cum Accountant – Promotion** : Assistant Manager-cum-Store Keeper with eight years regular service in the pay band of Rs.5200-20,200 (PB-I) plus Grade Pay of Rs.2400 (pre-revised scale of pay of Rs.4000-6000) failing which Assistant Manager cum Store Keeper and Clerks/Salesmen with sixteen years of combined regular service in those grades.
>
> **Deputy General Manager/Manager Grade II :** Deputy General Manager/Manager Grade II with eight years regular service in the pay band of Rs.5200-20,200 (PB-I) plus Grade Pay of Rs.2400(pre-revised scale of pay of Rs.4000-6000), failing which Assistant Manager cum Store Keeper and Clerks/Salesmen with sixteen years of combined service in those grades.

3. The above notification pertains to GSR – 125 dated 19.08.2009 is also annexed alongwith the statement of claim. Since one departmental canteen clerk was granted the pay scale of Rs.9300-34800 with grade pay of Rs.4200 as per the above notification and promoted as Deputy General Manager, the same is to be extended to the claimant as well,

otherwise it would be violation of Article 14 and 16 of the Constitution and will be against the spirit of justice. Finally, it has been prayed that the claimant may be granted pay scale of Rs.9300-34800 with effect from 01.04.2012 and accordingly designation be amended as Manager Grade II/Manager cum Accountant/Deputy General Manager.

4. Claim was demurred by the Department of Personnel and Training, taking various preliminary objections, inter alia of the claimant not approaching the court with clean hands, the claim being false, concocted, fabricated, concealment of facts, suppression of facts, the management not being an 'industry' within the meaning of clause 2(j) of the Act, cadre of canteen employees being a decentralized cadre under the control of the Government department in which they are working, the claimant being already sanctioned the financial benefits, the claimant not being not entitled for benefits as she was not promoted to the post of Manager Grade II, misjoinder of parties etc.

5. On merits, it has been averred by the management that the cadre of canteen employees is a decentralized cadre and these employees are under the administrative control of Government Department in which they are located. Recruitment/promotion is made by the respective departments. It is brought out that Office of Director of Canteens circulates model recruitment rules for various canteen posts which are adopted and notified by the respective Government departments . In case of need for deviation from Model Recruitment Rules circulated by DOPT, the concerned Government Department seeks approval of DOPT. The claimant was working as Clerk with effect from 10.01.1995 in Departmental Canteen of CPWD. On merits, management has denied the material averments contained therein and that the claimant has already been granted 2nd ACP with effect from 01.09.2008. It has also been averred that the CPWD did not seek approval of DOPT for any modification/deviation from Model Recruitment Rules circulated by the DOPT, hence prayer of the claimant for grant of pay band II with effect from 01.04.2012 was also not acceded to by the administrative Ministry.

6. Written statement was also filed on behalf of CPWD, which is on the same lines as the written statement filed on behalf of Department of Personnel & Training.

7. Rejoinder was filed on behalf of the claimant wherein averments made in the written statement were denied and stand taken in the statement of claim was reasserted as well as reiterated.

9. Against this factual background, this Tribunal vide order dated 10.03.2015, framed the following issues:

(i) Whether the claimant is entitled to pay scale of Rs.9300-34,800 with effect from 01.04.2010?

(ii) Whether the claim is not legally maintainable in view of the various preliminary objections?

(iii) As in terms of reference

10. Both parties adduced evidence in support of the stand taken in their respective pleadings. Claimant in order to prove her case examined herself as WW1 and tendered her affidavit Ex.WW1/A and she also tendered document Ex.WW1/1. Management, in order to rebut the case of the claimant, examined Shri Sunil Kumar, Executive Engineer, CPWD as MW1 whose affidavit is Ex.MW1/A and he also tendered in evidence documents Ex.MW1/1 to Ex.MW1/11. Management also examined Shri Kulbhushan Malhotra, Under Secretary, Department of Personnel & Training, as MW2 whose affidavit is Ex.MW2/A and he relied on documents Ex.MW2/1 to Ex.MW2/10. No other witness was examined by either of the parties.

11. I have heard Shri Sanjay Sharma, A/R for the claimant and Shri Chaman Sharma, A/R for the management. I have also gone through the records carefully. My findings on the above issues are as follows.

Issue No. (ii)

12. First I take up this issue. Though various preliminary objections were raised, none of the issues were pressed during the course of arguments by the management. Hence, this issue is decided accordingly.

Issue No.(i) and (iii)

13. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be disposed of conveniently.

14) Testimony of the workmen who appeared in the witness box as WW1 is in conformity with the averments made in the claim petition. She has admitted in her cross examination that she was granted benefits of Ist ACP w.e.f. 9/8/1999 and was placed in the pay-scale of Rs.3200-4990/- which pay-scale was revised to Rs.4000-6000/- as per O.M. dated 10/4/2006. Her pay was fixed in the pay-scale of Rs.5200-20200 with grade pay of Rs.2400/- after implementation of recommendations of 6th Pay Commission w.e.f. 1/1/2006. She was promoted as Assistant Manager-cum-Store Keeper on 10/9/2008. She also admitted that she was granted benefits of 2nd MACP w.e.f. 1/9/2008 and was placed in the pay-scale of Rs.5200-20200 (with Grade pay of Rs.2800/-) which fact is also evident from office order Ex.MW2/6. She further admitted that monetary benefits of 3rd MACP was granted to her on completion of 30 years of service w.e.f. 10/1/2015

and was placed in the pay-scale of Rs.9300- 34800- (with Grade pay of Rs.4200/-), as also evident from office order Ex.MW1/8.

15. Testimony of MW1 and MW2 is also in line with the contents of the written statement. They admitted about the issuance of office order dated 2/3/2012 (Ex.MW1/W-1) and that Shri Pramod Jha who was working as Manager (Canteen) got voluntary retirement from service on 31/3/2012 and that the Management did not appoint any official to the post of Manager (Canteen) after retirement of abovenamed Shri Pramod Jha.

16. From the pleadings of the parties and evidence adduced on record, it is evident that the claimant was appointed as clerk on 10/1/1985 and she was promoted as Assistant Manager-cum-Storekeeper in the pay-scale of Rs.3200-4800 w.e.f., 10/9/2008. It is also evident that Shri Pramod Jha who was working as Canteen Manager got voluntary retirement from service on 31st March, 2012. The Management had not appointed any official to the post of Canteen Manager w.e.f.1/4/2012 after retirement of aforesaid official Pramod Jha. Vide order dated 2/3/2012 (Ex.MW1/W-1) issued by the office of Management, the claimant was directed to take charge from Shri Pramod Jha, Canteen Manager She has specifically stated in her testimony as WW1 that after the post of Manager fell vacant, she has been working in that post and she has been looking after the work of Canteen Manager after retirement of earlier Manager. The Management did not appoint any official to the post of Canteen Manager after retirement of Shri Pramod Jha, Attested Copy of the Gazette notification dated 27/8/2009 has been filed on record and same being a public document is now marked as Ex.C-1 (for the purpose of identification of document). The said gazette notification contains rules relating to recruitment/promotion of group-C and D in the DOPT Canteen The said notification/Rules provides that for promotion to the post of Manager cum Accountant in the pay-scale of Rs.9300-34800/- with Grade Pay of Rs.4200/-, official working as Assistant Manager cum Store Keeper with 8 years regular service in the pay scale of Rs.5200-20200 with Grade Pay of Rs.2400/-, failing which **Assistant Manager cum-Store Keeper and clerks/salesman with 16 years of combined regular service in those grades are eligible for such promotion.** It is undisputed fact that the claimant was appointed as clerk as on 10/1/1985 and was promoted as 3200-4900/- (pre revised) w.e.f. 10/9/2008. Apparently s**he was having combined service of clerk and Assistant Manager-cum-Storekeeper for a period of more than 16 years, ,as on 1/4/2012 when post of Manager (Canteen) in the pay-scale of** Rs.9300-34800/- (with Grade Pay of Rs.4200) **became vacant, after voluntary retirement of Shri Promod Jha, Manager (Canteen) and was, therefore, eligible for appointment to the post of Manager (Canteen), as per service/promotion rules notified vide gazette notification Ex.,C-1.**

17. The workman/claimant has filed on record a copy of the order dated 23/3/2010 issued by the Department of Personnel & Training (DOPT) alongwith a copy of office note/recommendations of Department Promotion Committee as Ex.WW1/1, perusal of which shows that Shri K.G.Thomas Kutty who was holding the post of Assistant Manager cum Store Keepar w.e.f. 4/11/2009 and fulfilling the condition of 16 years of combined regular service in the grade of Assistant Manager cum Storekeeper and Clerk/Salesman, was promoted to the post of Deputy General Manager in the Departmental Canteen in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- with immediate effect i.e.23/3/2010. It would not be out of place to mention here that the workman/claimant was earlier working as clerk w.e.f. 10/1/1985 and was promoted to the post of Assistant Manager cum Storekeeper as on 10/.9/2008 and she was holding the said post even in the year 2012. She was granted benefit of 3rd MACT on 10/1/2015 in the pay-scale of Rs.9300-34800/- with grade pay of Rs.4200/- on completion of 30 years of service, which impliedly shows that her work and conduct was upto the mark.

18. To my mind the case of the workman/claimant is akin to the case of Mr.K.G.Thomas Kutty, inasmuch as the workman/claimant Smt.Sharda Sahotra having been appointed as clerk as on 10/1/1985, was holding the post of Assistant Manager cum Store Keepar w.e.f. 10/9/2008 and fulfilled the condition of 16 years of combined regular service in the grade of Assistant Manager cum Storekeeper and Clerk/Salesman. As such, in terms of recruitment/promotion rules Ex.C-1, the claimant/workman was also eligible and entitled to be promoted to the post of Manager (Canteen) in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-, after the post of Manager (Canteen) fell vacant w.e.f.1/4/2012 after retirement of Shri Pramod Jha, Manager (Canteen) on 31/3/2012. Action of the Management in not giving promotion to the claimant for the post of Manager (Canteen) in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/- is arbitrary, unjustified and unwarranted. These issues are decided accordingly in favour of the claimant and against the Management.

Relief :-

As a corollary to the aforesaid discussion, it is held that the workman/claimant is entitled to be promoted to the post of Manager (Canteen) in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-, w.e.f.1/4/2012. As such, this Tribunal considers it expedient in the interest of justice to direct the Management to issue formal order regarding

promotion of the workman/claimant to the post of Manager (Canteen) in the pay scale of Rs.9300-34800/- with grade pay of Rs.4200/-, w.e.f.1/4/2012, within a period of three months from the date of publication of the Award.

Award is passed accordingly in favour of the claimant and against the Management. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dated : 6.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1769.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त पूर्वी दिल्ली नगर निगम,दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 67/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1769.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2017) of the Central Government Industrial Tribunal-cum-Labour Court New Delhi - 1 as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, East Delhi Municipal Corporation, Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

DD No. 67/2017

Shri Sandeep Goyal s/o. Shri Shri Chand
R/o. X/3700 Gali No.7 Shanti Mohalla,
Delhi 110031. …Workman

Versus

1. East Delhi Municipal Corporation,
A=2/104, Udyog Sadan,
Patparganj Indl. Area,
Delhi 110092.

2. Prehari Cyber Security & Facilities Pvt. Ltd.,
8/40, First Floor, South Patel Nagar,
New Delhi 110008.

…Management

AWARD

This is a claim filed directly by the Workman/claimant Sandeep Goyal under Section 2(A) of the Industrial Disputes Act (hereinafter referred to as "the Act"), with the averments that workman was employed by Management No.1 as a caretaker at Samudai Bhawan of East Delhi Municipal Corporatioln w.e.f. 1/12/2014 at a monthly salary of

Rs.8000/- on adhoc basis. He was working satisfactorily without any complaint. Senior Officer Ms. Anita Bali used to give wages to the workman and maintained attendance register. She used to pay below the minimum wages and when he complaint about it, Smt. Anita Bali gave wages for the month of December, 2014 to February, 2015 to the workman. Thereafter the workman alongwith other employees raised their voice for regularizing their job as they had been working on adhoc basis form quite some time and being deprived of their statutory rights. It is pleaded that in response to his RTI application, the Management No.1 replied that the workman has not been appointed by Management No.1 but has been appointed by Management NO.2 and provided attendance register only for six months i.e. from December, 2014 till May, 2015. The workman made complaints to the Management No.1 regarding non deposit of wages of wages and against Smt. Anita Bali but the Management refused to take action against her. Management No.1 informed vide letter dated 22/6/2015. It is stated that the Management No.1 has made contradictory stand in RTI reply dated 3/6/2015 it was stated that the workman worked at Samudai Bhawan, Rajgarh Colony, but in another reply dated 19/2/2016 it was stated that the workman was working at South Patel Nagar, New Delhi. It is pleaded that services of t he workman were terminated illegally but **it has not been disclosed as to when his services were terminated. It is also** pleaded that the management even did not pay him wages after February, 2015 and deprived him the various facilities like ESIC, PF, Gratuity etc. He claimed to be a poor persona and he is jobless after wrongful termination by the Management. He prayed for reinstatement with full back wages, continuity of service and with all consequential benefits.

2. Notice of the claim petition issued to the Management No.1 and 2. Though Management No.1 participated in the proceedings through its Authorised Representative Shri Narender Singh but did not file any written reply. Ultimately, the matter was proceeded ex parte against the Management No.1 vide order dated 29/8/2017.

3. The claim petition has been resisted by the Management No. 2 who filed its written statement and took preliminary objections inter alia that claimant has not approached the Court with clean hands, inasmuch as he had joined the Management (No.2) against the contract of East Delhi Municipal Corporation, on 1/12/2014 on probation and he was very irregular in his services and he worked with the Management till 20/6/2015. He always misbehaved with the senior staff in filthy language and started absenting from duties without any reason & intimation to the Management w.e.f. 20/5/2015 and filed false & frivolous case against the Management. The Management (No.2) had never terminated his services at any point of time, rather the workman himself did not join duty for the reasons best known to him. It is alleged that the Management No.2 always paid minimum wages to the workman besides EPF and ESIC facilities as per rules. He was also having ESI card. EPF No. of the claimant is DLCPM 0045449/00393 and ESIC No. is 1114515804. The claim has been filed just to grab money from the Management. Prayer has been made for dismissal of the claim petition .

4. The workman/claimant filed rejoinder, wherein he denied all the allegations made by the Management No.2 and reiterated his own case as set up in the claim petition. He denied that he started absenting from duties without any reason and intimation from 20/5/2015 or that he misbehaved with the senior staff. It was stated that the Management No. 1 terminated his services from 22/6/2016 and therefore, no question of absenting from job from 20/5/2015 arises. He denied that he left the job at his own. It is alleged that the Management no.1 marked his attendance from 1/12/2014 and he worked for 570 days. Denying that the workman was paid minimum wages besides EPF and ESIC contributions, it is stated that the Management be put to strict proof of the same.

5. On the pleadings of the parties, following issues were framed on 29/8/2017 :-

1) Whether services of the claimant has been wrongfully and illegally terminated by the Management on 22/6/2016 as alleged ?

2) Whether the claim filed by the claimant is not legally maintainable in view of the various preliminary objections ?

3) Relief.

6. The Claimant in support of his case examined himself as W.W.1 and tendered his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to WW1/7. However, Management No.2 in order to rebut the case of the claimant did not examine any witness despite the fact that number of opportunities were granted to it. Ultimately the defence of the Management No.2 was closed vide order dated 14/2/2019 when it failed to adduce evidence and to pay the costs imposed upon it..

7) I have heard Shri A.K.Singh A/R for the claimant/workman and Shri Rajan Kumar, A/R for the Management No. 2 and have gone through the records carefully. My findings on the above issues are as follows.

Issue No. 1 and 2 :-

8) Both these issues being inter related are being taken up together for the purpose of discussion and they can be conveniently disposed of.

9) Testimony of the workman/claimant is in line with the averments made in the claim petition. He filed on record a number of documents viz. WW1/1 –copy of his Aadhar card; extracts of attendance sheet from December, 2014 to May, 2015 as Ex.WW1/2 (colly.); copy of letter/reply dated 22/6/2016 (Ex.WW1/3) received by the claimant from PIO in the office of Management No.1 under RTI Act, stating that he was engaged by a private company/contractor at its Community Centre for upkeep; another letter/reply dated 3/6/2015 (Ex.WW1/4)received by the claimant from the PIO of the office of Management NO.1, stating that he was not the employee of Management No.1 rather was employee of an agency/contractor M/s Prahri Cyber Agency (Management No.2 herein) and that the said agency used to pay wages t him. To the same effect is the reply under RTI Act given by PIO of the office of Management No.1 to the claimant vide letter dated 19/2/2016 (Ex.WW1/5). Vide reply dated 2/11/2016 (Ex.WW1/6) PIO of the office of Management No.1 informed the claimant that Ms. Anita Bali was neither making payment of wages nor taking attendance at Community Centre of Management No.1 and that he was not employee of East MCD; Ex.WW1/7 is the copy of the complaint which the workman had given to ALC./Conciliation Officer. In the cross examination, the workman/claimant clarified that he has no complaint or grievance against Management No.2 herein and he never worked under Management No.2 at any point of time and his relief is restricted only against Management No. 1.

10. Neither the Management No.1 or Management No.2 adduced any cogent evidence on record to prove that the claimant was in fact was the employee of Management No.2 M/s Prahari Cyber Security or that he was deputed by Management No.2 to work at the Community Centre of Management No.1 East MCD, although the Management No. 1 has time and again informed the claimant vide its replies under RTI Act (Ex.WW1/3 to Ex.WW1/6) that the claimant Sandeep Goel was not the employee of East MCD. Even the Management No.2 has not led any evidence to prove that the claimant was paid minimum wages under Minimum Wages Act besides facilities of PF and ESIC. Testimony of the claimant that he was employed by Management No.1 as a caretaker at its Samudari Bhawan w.e.f. 1/12/2014 at a monthly salary of Rs.8000/- on adhoc basis and that he worked with the Management for 570 days has gone unchallenged and unassailed. The claimant has filed on record copies of the Attendance Sheet/s for the months from December, 2014 to May, 2015 as Ex.WW1/2 (colly.) which is duly signed/verified by Ms. Anita Bali, Building Incharge, Community Service Department, East Delhi Municipal Corporation. Management No.1 has not come forward to rebut the case of the claimant or to show that the documents Ex.WW1/2 (colly.) filed by the claimants are false and fabricated. In these facts and circumstances of the case, this Tribunal is of the view that relationship of employee and employer between the workman and Management No.1 stands established, and **the claimant falls within the definition of workman as provided under Section 2(S) of the Act**. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act.

11) Version of the claimant/workman that he kept on working under Management No.1 till 22/6/2016 when he received letter dated 22/6/2016 and that his services were terminated illegally, has also gone unchallenged and unassailed. As mentioned above, version of the claimant that he worked with the Management for 570 days has gone unchallenged and unassailed. There is nothing on record to suggest that before terminating the services of the claimant any notice/memo or one month's salary in lieu of such notice was p;aid to him, as required under Section 25-F of the Act, It would not be out of place to mention here that Section 25-F of the Act also clearly provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month' s notice in writing indicating the reasons for retrenchment or the workman has been paid in lieu of such notice, wages for the period of the notice. Provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –

No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination. As such, the Management has violated the provisions of Section 25-F of the Act.

12- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

13- Since there is no evidence on record that in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman w.e.f,.22/6/2016 is held to be illegal and void.

14- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. No doubt, the version of the claimant that he continuously worked under the Management from 1/12/2014 till 22/6/2016 has gone unchallenged but he has not filed on record any document to show that his employment was on the basis of any written test/interview or that he was getting salary/wages of Rs.8000/- per month from the Management No.1. It would not be out of place to mention here that he disclosed his age as 37 years when he entered the witness box on 17/5/2018, meaning thereby that he was about 33 years of age when he claimed to have joined employment of the Management on 1/12/2014. Apparently, at the time when he was engaged as Caretaker in the Community Centre of Management No.1, he had crossed the age for selection in any government department/organization. While claiming that he is jobless since after his termination from service, the workman has prayed for reinstatement into service with full back wages. As discussed above, the claimant was engaged on 1/12/2014 and as per his own pleadings, he worked just for 570 days. There is nothing on record to suggest that job of the claimant was on permanent basis or that he was given any regular post/appointment by the Management No.1. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

15) Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.1 lakh (Rupees One Lakh) appear to be just and reasonable, and the same is payable to the claimant herein by the Management No.1. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 3.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1770.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, अशोक होटल, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 161/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/78/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1770.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 161/2016.) of the Central Government Industrial Tribunal-cum-Labour Court New Delhi-1 as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, Ashok Hotel, New Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42011/78/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 161/2016

Shri Kamlesh Kumar and others
Represented by Shri S.S. Upadhyaya, President,
MAZDOOR JANTA UNION,
C-47, STAFF QUARTERS, Ashok Hotel ,
New Delhi 110021. …Workmen/Claimant

Versus

The Management of Ashok Hotel
Represented by
General Manager, Ashok Hotel,
50-B, Chankayapuri,
New Delhi 110021. Management/ Respondent

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide its letter No.L-42011/78/2016/IR(DU) dated 15/9/2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of the Ashok Hotel in not regularizing the services of the workman as per details given (list annexed) is fair and legal ? If not to what relief the workman are entitled to and from which date ?'

2. Both parties were put to notice and 7 Nos. of workmen whose particulars/details given below filed a joint statement of claim, with the averments that they are working in the premises of Ashok Hotel and carrying out the misc. jobs, belonging to the Management of Ashok Hotel at its Front Office/Reception vis-à-vis booking of rooms for guests directly or through Travel Agents etc; that the management of Ashok Hotel – a public sector organization functioning under ITDC, Ministry of Tourism, is beneficiary of their services.

Sl.	Name of workman S/Shri	Father's Name S/Shri		Desig nation.	Working since
1	Kamlesh Kumar	Manak Chand		FO Coord.	June, 2004
2.	Sunil Batra	Labh Chand		FO Cashier	Jan, 2004
3	Shashi Kumar	Prem Singh		FO-GRE	Nov. 2011
4	Satyendra Kumar	Mohan Singh		FO-Coord	Jan, 2012
5	Deepak Kr.Chauhan	Pramod Kumar		FO-GRE	Jan. 2013
6	Ramavtar Upadhyay	Meghshyam		FO-GRE	Jan. 2013
7	Sidharth Sheelanand	Krishan Chand		FO Cashier	Sep. 2013

It is pleaded that though the workmen are performing duties of cashier in the Front office or that of Reservation clerk but the Management of Ashok Hotel is paying them minimum wages instead of paying them regular pay scale at par with the permanent employees working under it as Receptionist/clerk/cashier in the Front Office/reservation in different shifts. The workman were paid salary through M/s NM Manpower Contractor for the period from June, 2004 till September, 2012; through M/s. Sprakling Enterprise Contractor from October, 2012 to February, 2014; through M/'s Scan Guard Protection Services – contractor from March, 2014 till date. It is alleged that these contractors are not registered with the Labour Department and same is in violation of Contract Labour (Regulation & Abolition) Act. It is also alleged that in the similar cases of employees working in Housekeeping department and kitchen department of Ashok Hotel, the labour Courts have passed award, declaring such workers to be employees of Management and that the Management has challenged the said Award/s which was confirmed by Hon'ble High Court. It is further pleaded that the contract between the management of Ashok Hotel and so call contractors are bogus, sham and camouflage and not genuine and same were made with the intention to deprive the workman of regular pay scale and other benefits at part with permanent employees of Ashok Hotel. The management of Ashok Hotel has got sanctioned strength of workers and even posts are lying vacant. Thus, the workmen/claimants have prayed that Management of Ashok Hotel be directed to regularize their services in the regular pay scale from the initial date of their working.

3- The claim of the Workman has been resisted by the Management of Ashok Hotel who filed its written statement and took preliminary objections that the claimants being employees of M/s Scan Guard Protection Services Pvt. Ltd. are not entitled to seek relief of regularization by the Management of Ashok Hotel. It is alleged that the Management entered into an agreement with M/s Scan Guard Protection Services Pvt. Ltd. for providing skilled manpower in different areas of the Hotel. The claimants are drawing their salaries from their employer M/s Scan Guard Protection Services Pvt. Ltd./contractor. The said contractor has got its own PF code and the contributions made by the claimants were deposited through PF code of their employer. It has been denied that the agreement between the Management and the aforesaid contractor is bogus, sham or artificial and not genuine,. The claimants have been deployed by the contractor for fulfilling its obligations under the contract awarded to it. The Management has neither violated any rules nor has committed any unfair labour practice. Prayer has been made for dismissal of the claim petition.

4- No rejoinder was filed on behalf of the claimants. Vide order dated 24/3/2017 following issues were framed on the pleadings of the parties :-

(i) Whether the claim is not legally maintainable in view of the various preliminary objections ?

(ii) In terms of reference ?

5. The Claimants in support of their case examined themselves as WW2 to WW6 besides examining Shri S.S.Upadhyay, President of Ashok Hotel Mazdoor Janta Union as WW1 who all tendered their respective affidavits Ex.WW1/A to Ex.WW6/A and relied on number of documents which will be referred to while giving findings to various issues, wherever required.

6- On the other hand, the Management did not examine any witness and the matter was proceeded ex parte against it vide order dated 12/6/2017. Thereafter an application for recalling the ex parte order was moved on behalf of the Management and same was allowed subject to payment of costs but Management did not come forward to pay the costs and hence right of the Management to cross examine the claimants' witnesses was closed vide order dated 11/2/2019. Thus, no evidence has been adduced in rebuttal from the side of the Management.

7- I have heard Shri S.S. Upadhyay, A/R for the workmen and have also gone through the records carefully and my findings are as follows.

8- **Issue No.1 and 2** :-

Both these issues being co-related are taken up together and they can be disposed of conveniently by a common discussion.

9- At the outset I may mention that onus to prove relationship of employee-employer between themselves and Management is on the workmen/claimants. Testimony of the workman is in line with the averments made in the claim

petition. According to their statement of claim as well as evidence adduced on record, it is manifest that they are working in the premises of Ashok Hotel and carrying out the misc. jobs, belonging to the Management of Ashok Hotel at its Front Office/Reception vis-à-vis booking of rooms for guests directly or through Travel Agents etc. Although the claimant have filed on record number of documents but they have not filed on record any document in the form of appointment letter or salary slip etc. to show that they were appointed/employed by the Management of Ashok Hotel at any point of time or that they were paid wages/salary by the Management of Ashok Hotel in lieu of services rendered by them. Document Ex.WW1/1 is the copy of resolution/espousal certificate of the Union; WW1/2 is the copy of demand notice dated 10/8/2015 which the Union of the claimants had sent to the Management; Ex.WW1/3 is the copy of Certified Standing Orders (Modified) of Ashok Hotel; copy of Ashok Hotel Employees Provident Fund Trust Rules is Ex.WW1/4; WW1/5 is copy of the order dated 28/12/2010 of Employees Provident Fund Organization, whereby relaxation granted to the Management Hotel was withdrawn and it was directed to transfer the PF accumulations in respect of all its employees/members to RPFC, Delhi (North); WW1/6 is the copy of inter office communication of the Management, asking the departments concerned to forward the biometric attendance sheet of contractual manpower after verification, so as to ensure timely payment of wages to the contractual employees. Ex.WW1/7 is also the inter office communication of the Management whereby payment of Rs.1000/- on the eve of Golden Jubilee of Ashok Hotel and Rs.500/- on eve of Satyagrah Conference was ordered to be paid to the contractual workers deployed under AMC; Ex.WW1/8 is copy of letter dated 28/7/2008 which the Management had sent to M/s Recruitment Bureau regarding deployment of Satveer Nimesh at the level of Cashier; WW1/9 is the inter office communication dated 27/11/2008 of the Management regarding redeployment of contractual workers Nidhi Dang and Ankita Prakash (**not relevant with the instant case**); WW1/10 is the copy of letter dated 20/12/2004 sent by the Management to M/s NM Manpower Outsourcing Pvt.Ltd., intimating about the applicability of reimbursement of paid leave to contractual employees; Ex.WW1/11 is copy of Employment of Contract Labour Manual of ITDC.; Ex.WW1/12 is the copy of sanctioned strength, in position and vacant position of the Staff posted at Ashok Hotel. Claimant Kamlesh Kumar also filed a number of documents viz. WW2/1 is copy of his own visting card; WW2/2 is the copy of e-mail which was sent by him through the official e-mail of the Management to Telengana Bhawan on 3/5/2017, confirming reservation of rooms for Justice C.V. Nagrarjuna and Sri GD Aruna, IAS on the request letter Ex.WW 2/3 received from General Admn. Branch of Govt. of Telengana.; documents Ex.WW2/4 to Ex.WW2/10 are also copies of E-mails allegedly sent by claimant Kamlesh Kumar from official e-mail of Ashoka Hotel to other clients / customers in the month of May, 2017; documents Ex.WW2/11 and Ex.WW2/12 are the copies of inter office communication/certificate of the Management, showing that the claimants Kamlesh Kumar, Rav Avtar and Rajan Kumar had attended training session of 8 hours. The workman/claimant Satyendra also filed number of documents vis. WW3/1 copy identity card issued to him by his employer M/s Scan Guard; WW3/2 & Ex.WW3/3 is copy of email dated 24/4/2017 sent by the workman/claimant from official website of the Management to the client regarding confirmation of room accommodation at Ashok Hotel; Ex.WW3/4 is the copy of his own visiting card. To the same effect are documents filed by other claimants/ workmen viz. WW4/1 to WW4/12; Ex.WW5/1 to Ex.WW5/16;. Ex.WW6/1 to Ex.WW6/5 showing that their employer is the contractor of the Management herein but they have been rendering services at Ashok Hotel.

10- From the deposition of WW1 to WW6 coupled with the document Ex.WW/2 to Ex.WW2/12 ; Ex.WW3/2 to Ex.WW3/7; Ex.WW4/3 to Ex.WW10; Ex.WW5/2 to Ex.WW5/12 and Ex.WW6/2, filed on record, it appears prima facie that the claimants have been working under the control and supervision of the Management of Ashok Hotel though they were initially engaged through contractor/s. The Management alongwith the written statement had filed on record copy of the agreement dated 26/2/2014 executed between them and M/s Scan Guard Protection Services (P) Ltd. and for the sake of reference, the said agreement is now marked as Mark C-1.. though the same has not been proved on record by the Management. Even if it is assumed for the sake of arguments that the Management of Ashok Hotel used to get work done from the claimants/workmen through the contactor pursuant to the contract/agreement Mark-C-I issued in favour of the contactor/s, in that eventuality also the question arises for consideration is whether the said contract is a sham or camouflage as alleged by the claimants.

11- It is fairly settled that the ID Act as well as Contract Labour (Regulation & Abolition) Act, 1970 are essentially social and beneficial legislations. The main purpose of the CLRA Act, 1970 is to regulate the conditions of workers under the contract labour system and to provide for its abolition by the appropriate government as provided under Section 10 of the said Act. Section 12 of the said Act bars a contractor from undertaking or executing any work through contract labour, except under and in accordance with a licence issued. Section 23, 24 and 25 of the Act makes contravention of the provisions of Act punishable thereunder. There is also requirement for the principal employer of the establishment to get itself registered under the CLRA Act so as to avail the benefit of provisions of the Act.

12- Constitution Bench of Hon'ble Supreme Court in the celebrated case of **Steel Authority of India Ltd. Vs. National Union Waterfront Workers, (2001) 7 SCC 1** noticed the following circumstances under which contract labour would be held to be the workmen of the principal employer :-

"107. An analysis of the cases, discussed above, shows that they fall in three classes :

(i) Where contract labour is engaged in or in connection with the work of an establishment establishment and employment of contract labour is prohibited either because the Industrial Adjudicator/Court ordered abolition of contract or because the appropriate Govt. issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered.

(ii) Where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer, were held in fact and in reality, the employees of the principal employer himself. Indeed such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited.

(iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment, the principal employer availed the services of a contractor, the Courts have held that the contract labour would indeed be the employees of the principal employer.

13- In the case of Management of **Ashok Hotel Vs. the Workmen (W.P. –Civil No.14828/2006 – decided on 19/2/2013)**, similar issue was involved and it was a case where various workmen were working continuously as safaiwala/housemen in the kitchen department etc. and they were alleged to be working directly under the contractor who had entered into a contract with the principal employer i.e. Ashok Hotel. Contention of the Management to the effect that workmen were employees of the contractor was rejected and contract in the said case was held to be sham and camouflage so as to deny direct relationship of employer (Ashok Hotel) and the workmen.

14- Except for the bald statement that the claimants are/were the workers of the contactor, the Management has not any evidence to rebut the contention of the claimants that they have been working continuously from the date of their engagement and that the contractors used to be changed but the workers remained the same. Agreement Mark C-1 was executed by the Management in favour of M/s Scan Guard Protection Services (P) Ltd. on 26/2/2014 and the said agreement was effective from 1/3/2014 to 30/9/2015. The said contract was simply for providing manpower and was not for completion of any project/scheme. The Management of Ashok Hotel has not filed on record copy of fresh/renewed agreements/ contracts awarded to contractor/s for the period beyond 30/9/2015., so as to ascertain as to whether such contract was either for completion of any project or for supply of manpower. The Management has not explained as to why it continued to engage and get the work done through contractual workers even beyond 30/9/2015. All these circumstances lead me to draw an inference against the Management that the contracts/agreements issued by the Management of CPWD for getting the work done through the claimants/workmen herein from time to time are sham and camouflage and that there existed relationship of employer-employees between the parties.

15- Now, an important question/issue arises for consideration is as to whether the workmen/claimants who are still working with the Management are entitled to be regularized to the post/s to which they are working. It is fairly settled that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

16- Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

"… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager et., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

17- Our own High Court in the case of **Project Director, Department of Rural Development Versus its Workmen through D.P.V.V.I.E.Union (W.P. –Civil No. 17555/2005 – decided on 29/3/2019)** after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and**

other Vs Uma Devi, 2006 (4) SCC 1 and of Delhi High Court in the case of **Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018**, has observed in para 27 as under :-

> "In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and can neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of the present case. **Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."**

From the above rulings, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & unless **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other. However, the Industrial Tribunal is vested with powers to curb unfair labour practices being adopted by the employer/s.**

18- It is evident that the claimants/workmen have been working with the Management continuously and uninterruptedly as contractual workers since the date of their engagement as mentioned in para 2 above and they are doing the Reservation/Reception Assistant and/or Cashier nature of which is considered to be perennial. The Management has deprived them the status & privilege of permanent/regular employee. Employing workmen as "badlis", casuals or temporaries and to continue them as such for years together with the object of depriving them of the status & privileges of permanent workman amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act. It emerges that the Management has adopted unfair labour practice in depriving the workmen/claimants herein of the status & benefit of permanent workman and such a practice is required to be curbed.

19- It has also come on record that the workmen/claimants described as contractual employees, are not being paid wages as per pay-scale for their respective categories and are paid wages less than that being paid to their regular counter-parts. Once the workmen/claimants are doing same duties and responsibilities as are being performed by regular employees of the Management, **they are entitled to get wages at par with those of regular employees, on the principle of "Equal Pay for Equal Work"**

20- Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "**The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like).** It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

21- In view of the rulings and facts of the case as discussed hereinabove, it is held that the claimants shall be deemed to be employees of the Management and they shall be entitled to get wages as per pay-scale for their respective categories **w.e.f. 15/9/2016** – the date when the matter was referred to this Tribunal by the appropriate Govt.

22- As regards regularization of services of the workmen/claimant, it is worthwhile to mention here that the claimants/workmen have not led any cogent evidence to show that they were eligible (age-wise and qualification-wise) for recruitment for the job/s with the Management, on the date when they were initially engaged through their respective contractor/s for rendering services in Ashok Hotel. For want of requisites for regularization of the job of the claimants, the Management is directed to consider case of the claimants/workmen who are working under them, for regularization of service as per its prevailing scheme/policy within a period of three months from the date of publication of the Award.

While regularizing services of the workmen/claimants, the Management shall keep in mind age, qualification and length of service etc. rendered by the claimants and any policy in this behalf. Award is passed accordingly in favour of the claimants and against the Management.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 5.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1771.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कमिश्नर, उत्तरी दिल्ली नगर निगम, दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 171/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/163/2017-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1771.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 171/2018) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, North Delhi Municipal Corporation, Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42011/163/2017-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, DELHI

ID No.171/2018

The President,
MCD General Mazdoor Union,
Room No.95, Jamnagar House,
Shahjahan Road,
New Delhi – 110 011 …Workman

Versus

The Commissioner (North)
North Delhi Municipal Corporation
4th Floor, Civic Centre,
Shyama Prasad Mukherjee Marg,
Delhi …Management

AWARD

A reference under clause (d) of sub-section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment for adjudication vide letter No.L-42011/163/2017-IR(DU) dated 06.04.2018 for adjudication of an industrial dispute with the following terms:

''Whether the workmen Shri Manoj Kumar and 8 others employed by the management of North Delhi Municipal Corporation and later regularized (list attached) are entitled to the wages as are admissible to their regular counterparts for the period of their daily wages/muster roll employment? If yes to what relief the workmen are entitled to? Whether the workmen are also entitled to counting 50% of their service rendered as daily wages/muster roll workmen for the purpose of pensionary benefits in the establishment of North Delhi Municipal Corporation. If so, then what directions are necessary in this respect?"

2. The claimants as mentioned in Annexure A of the reference have been performing their duty under Engineering Department of Narela Zone under North Delhi Municipal Corporation. It is further alleged that as per LPA No.573/2013 titled North Delhi Municipal Corporation Vs. Harpal Singh, Hon'ble High Court has granted equal pay for equal work with effect from 01.04.1998 onwards and 50% of their muster roll services were counted for pensionary benefits. These workmen are similarly situated with those workmen who got award/order and thus the claimants are also entitled for equal pay for equal work from 01.04.1988 onwards alongwith 50% of their muster roll service may be counted for pensionary benefits, in view of circular dated 16.06.1988. In the light to the above office circular, management has followed concept of equal pay for equal work which has been upheld by the Hon'ble High Court vide LPA No.573/2013. The operative para of the judgement is as under:

"6. Therefore, the second issue resolves itself in favour of the respondent and against the petitioner in view of policy circular dated 31.01.1981.

7 Pertaining to the first issue, we find that the Standing Committee of the Corporation vide its decision No.2059/Stg./dated 220.05.1982 had resolved that pertaining to the Engineering Department of MCD scales applicable to workersin CPWD/Delhi Administration PWD shall be implemented. Based on the said decision of the Standing Committee, WP(C) No.6763/2010 MCD vs Workmen (Ompal & 1240 others) was decided by a learned Single Judge of this Court on January 15, 2013 holding that in view of the Standing Committee Resulution dated 22.05.1982 MCD would be obliged to pay daily rated employees salaries/wages at par payable by CPWD.

8. Suffice would it be to state that as per Section 42 of the Indian Evidence Act, 1972 judgements are relevant if they relate to matters of public nature relevant to an inquiry.

9. The impugned awards have directed wages to be paid as per policy of CPWD adopted by MCD requiring daily rated workmen to be paid wages at par with regular counterparts, i.e. in the minimum of pay scale (excluding any kinds of increments)

10. The only modification which would now be warranted would be the fact that there exists a policy circular dated June 16, 1988 which was notified by MCD and it reads as under:

'The wages of the workers will be calculated in the manner indicated in the circulars issued by CPWD and will be effective from 01.04.1988 only in view of very tight financial position of the MCD and the ongoing process of regularization of daily wages employees according to phased programme besides other extra facilities already extended to them by different departments. Because of large number of daily wages employees working in MCD, the increase in wages may bring additional financial liability to the tune of about Rs.6.5 crores and we may have to cut down the civic services drastically if the payment is to be made from the dater earlier than 01.04.1998. Proportionate increase will also have to be allowed to part time workers depending upon the actual duration of their duties. In order to get over the requirement of additional hands for anti-malaria operations, for short duration only, the department may engage 300 unskilled workers at the rate to be worked out on the basis of Rs.875.00 per month. A preamble for approval of increased rates of wages be taken to standing committee positively within two weeks.'

11. The policy circular requires differential in wages to be made after April 01, 1988."

3. Finally, claimants have prayed that they may be awarded equal pay for equal work and 50% of their services rendered as daily wager/muster roll, alongwith all consequential benefits with effect from 01.04.1988..

4. Despite affording of several opportunities, management failed to file their statement of defence, as a result of which defence of the management was struck off on 26.03.2019.

5. The claimant in order to prove their case against the management examined Shri B.K. Prasad as WW1 whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/5. None was examined on behalf of the management as defence of the management was already struck off.

6. I have heard Shri B.K. Prasad, A/R for the claimants and Shri Vivek Chandra, A/R for the management. During the course of arguments, management relied on the judgement titled 'State of Haryana vs. Jasmer Singh (1996) 11 SSC 77, which to my mind does not come to the rescue of the management in any manner as the Hon'ble Apex Court dealt with the question of grant of back wages where termination of the job of a daily paid worker who worked for 240 days in a calendar was found to be illegal, null and void.

7. The moot question which arises for consideration before this Tribunal is whether the claimants herein are entitled to the equal pay for equal work with effect from 01.04.1988 and are also entitled to 50% other wages of service rendered as daily wagers/muster roll.

8. It is clear from evidence as well as pleadings on record that the claimants were initially working as Beldar/Nalla Beldar on muster roll basis on regular basis from the dates as mentioned in Annexure A annexed to the reference. There is also office order Ex.WW1/2, which in fact deals with grant of equal pay for equal work to the daily rated workers and compilation thereof. It has been clarified in the above office order that total monthly emoluments admissible to regular counter parts of daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting there-from the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by the number of days in the month. The figure so arrived will be the daily rate of wages of the worker and in case daily rated workers worked for all the working days in a month including admissible rest days, he is entitled to full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counterparts.

9. Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, CPWD (ATR 1986 SC 1976) decided on 17.01.1986, dealt with the question of equal pay for equal work in respect of daily rated workmen performing same duties which was being performed by their regular counterparts in the department. After discussing the ambit and scope of Article 14 of the Constitution of India, it was held that there should be equal pay for equal work of equal value. It makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. They must receive same salary and conditions of service must also be the same. Hon'ble Supreme Court also expressed anguish that most of the workers are kept in service on temporary basis as daily wage workers without their service being regularized, which is completely against the spirit of Article 14 of the Constitution of India.

10. Hon'ble Supreme Court in the case of Director General Works, CPWD vs Devender Singh considered the question of regularization as well as payment of equal wages for such daily rated workmen. Writ appeal was filed against judgement dated 18.04.2004 of the Single Judge, whereby the writ appeal filed by the management was dismissed and award passed by Industrial Tribunal No.2 was upheld. It was also the case of daily rated workers working on muster roll who were posted in various Divisions of the CPWD. In the said case, there is clear cut mention in para 9 of the judgment that when services of a junior has been regularized, there is no justification to deny such relief to workman who was senior to such worker., otherwise it would amount to discrimination, which is not permissible under the law, as has been held in Secretary State of Karnataka vs.Uma Devi (2006 4 SCC 1).

11. Hon'ble High Court in Devender Singh case(supra) referred to the decision of the Hon'ble Apex Court in the case of Bal Kishan Vs. Delhi Administration and observed as under:

10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.

12. There is also judgement dated 04.04.2006 of the Hon'ble High Court which also deals with the same matter, pertaining to the case of Vijay Chand. In the said judgement also, Tribunal has passed an award in respect of workman Shri Vijay Chand on the premise that regularization was granted to equally placed other three workmen, and there was no reason to deny the relief of regularization to Shri Vijay Chand who was similarly placed like the other three workmen. As such, direction was made for considering the case of the workman for regularization. Thereafter, matter was again taken by way of SLP before the Hon'ble Apex Court in the case titled Union of India vs. Vijay Chand decided on 07.01.2011. Contention of the management was rejected and order of regularization by the High Court and that of the Industrial Tribunal was reaffirmed as under:

> 'In our view, the direction given by the Tribunal for consideration of the respondent's case for regularization of service, as was done in the case of other three similarly situated persons, was legally correct and justified and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. In the facts and circumstances of the case, we do not consider it to be a fit case for exercise of jurisdiction by the court under Article 136 of the Constitution.
>
> The special leave petition is accordingly dismissed.'

13. In Director General: Works, CPWD vs Karam Singh and others, wherein it was a case where the claimants were also party to the said case. Contention of the management regarding denial of relief of regularization and equal wages to such workmen who were performing similar kind of duties like their regular counter parts, was rejected by the Hon'ble High Court of Delhi and the calculation of the wages in terms of office order dated 21.10.1990 applicable for daily rated workers was upheld. It was further held when a particular award has attained finality, such daily rated workers were direct employee and are entitled for equal wages, there is no question of entertaining such plea time and again.

Workman was held entitled to the recovery of amounts due under the impugned recovery certificate as ordered by the Tribunal.

14. In the case of Randhir Singh vs. Union of India [1982] 1 SCC 618; it was a case where question of equal pay for equal work was considered in respect of driver constables in Delhi Police. Drivers in the police department were demanding the same pay scale which was being given to other drivers under the services of Delhi Administration. Claim was upheld by the Hon'ble Apex court as under:

> 'Held, the circumstances that the persons belonged to different departments of the government is not sufficient to justify different scales of pay irrespective of the identity of their powers, duties and responsibilities. If anything by reason of his investiture with the powers, functions and privileges of a police officer, the petitioner's duties and responsibilities were more arduous. The answer of the respondents that the drivers of the police force and the other drivers belong to different departments and that the principle of equal pay for equal work is not a principle which the courts may recognize and act upon is unsound and irrational. The writ petition was, therefore, allowed. The respondents were directed to fix the scale of pay of the petitioner and the driver-constables of the Delhi Police Force, atleast at par with that of the drivers of the Railway Protection Force with effect from January 1, 1973.'

15. Same view has been taken in a latest judgement of the Hon'ble Apex Court in State of Punjab Vs. Jagjit Singh (2017) Lab.I.C. 427 whereby while considering concept of 'Equal pay for equal work', it was observed as under:

The principle of 'equal pay for equal work' can be extended to temporary employees (differently described as workcharge, daily-wage, casual, ad-hoc, contractual, and the like). It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situated, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

16. In NDMC Vs. Harpal Singh (LPA No.573/2013 decided on 27.08.2013), same question was considered by Hon'ble Apex Court and firstly whether the workmen were entitled to wages as was paid by CPWD to daily wagers employed under CPWD and secondly, whether the respondents would be entitled to 50% service reckoned as daily wages to be taken into account for the purpose of pensionary benefits.

17. It is clear from the above judgement that in view of the circular dated 16.06.1998, 50% of their muster roll services were counted for pensionary benefits. It is further clear from legal position discussed above that the workmen who have been performing duties of particular nature is entitled to the pay-scale of the same post.

18. As per writ petition in the matter of Ompal and others, Hon'ble High Court allowed equal pay for equal work and observed in Para 3 as under:

> 'Moreover, learned counsel for the respondent has also sought to place reliance upon the communication dated 19.05.1982 issued by the Engineering Department of the MCD which records that the Engineering Department is following the norms of CPWD/Delhi Administration, PWD and all the scales applicable to the workers in CPWD/Delhi Administration, PWD are being implemented in the department. The aforesaid recommendation has been approved by the Standing Committee vide a decision No. 2059/Stg. Dated 22.05.1982. In this regard, reference is drawn to the judgement of the Division Bench of this Court in LPA No.126/2010 and connected matters titled MCD Vs. Abid Ali and Othrs.'

19. Though management has taken up the above case by way of S.L.P., but Hon'ble Apex Court has only modified the order of payment of equal pay for equal work with effect from 01.01.1998 as is clear from Para 10, which is reproduced hereunder:

'10. The only modification which would now be warranted would be the fact that there exists policy circular dated June 16, 1988 which was notified by MCD and it reads as under:

'The wages of the workers will be calculated in the manner indicated in the circulars issued by CPWD and will be effective from 01.04.1988 only in view of very tight financial position of the MCD and the ongoing process of regularization of daily wages employees according to phased programme besides other extra facilities already extended to them by different departments. Because of large number of daily wages employees working in MCD, the increase in wages may bring additional financial liability to the tune of about Rs. 6.5 crores and we may have to cut down the civic services drastically if the payment is to be made from the dater earlier than 01.04.1998. Proportionate increase will also have to be allowed to part time workers depending upon the actual duration of their duties. In order to get over the requirement of additional hands for anti-malaria operations, for short duration only, the department may engage 300 unskilled workers at the rate to be worked out on the basis of Rs.875.00 per month. A preamble for approval of increased rates of wages be taken to standing committee positively within two weeks.

11. The policy circular requires differential in wages to be made after April 01, 1988.

12. Ordered accordingly."

20. The above judgement of the Hon'ble High Court were taken care of by the management when they have issued letter dated 16.06.1998 Ex.WW1/3. It is clear that in Ex.WW1/3 under Clause 3 of the said letter, management has increased the wages of the staff as per the above judgement as per the details given in the above clause. Letter also provides that workmen working on the said post are also entitled to the wage from the date when they were working on the said post. Thus, wages of the workmen is to be calculated in the manner given in the above circular/letter. It is therefore held that the claimants, as mentioned in Annexure A to the reference received from the appropriate Government, is entitled to equal pay for equal work with effect from 01.04.1988 and onwards and are entitled to 50% other wages of services rendered as daily wages/muster roll as per policy of 'Equal Pay for Equal Work' during the period of muster roll. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A. C. DOGRA, Presiding Officer

Dated : 05.09.2019

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1772.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड अम्बाला कैंट, (हरियाणा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 33/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-40012/30/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1772.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2015) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Bharat Sanchar Nigam Ltd , Ambala Cantt, Haryana & Others, and their workmen which were received by the Central Government on 23.09.2019.

[No. L-40012/30/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A. K. Singh, Presiding Officer

ID No. 33/2015
Registered on:-02.09.2015

Sh. Satish S/o Sh. Wazir Singh, Resident of Vill. & P.O. Baroda,
Tehsil Uchana, Distt. Jind (Haryana)-126102. …Workman

Versus

1. Bharat Sanchar Nigam Ltd. through its Chief General Manager, Telecom Haryana Circle, Ambala Cantt.
2. S.E.(Electrical), Telecom Electrical Circle, CGMT, Haryana Circle, Ambala Cantt.
3. General Manager Telecom, Old Hansi Road Jind, District Jind-126102.
4. Sub-Divisional Engineer (Electrical), GMTD, BSNL, Jind-126102. …Respondents

AWARD
Passed on:-16.09.2019

Central Government vide Notification No. L-40012/30/2015-IR(DU) Dated 24.08.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of BSNL in terminating the service of the workman is legal and justified? If not, what relief the workman is entitled to and from which date?"

1. Both the parties were served with notices. The workman/claimant Satish has filed his statement of claim with the averment that he was appointed as Peon in the office of Sub-Divisional Engineer (Electrical), GMTD, BSNL, Jind, in the month of May 2002 on daily wage basis and rendered his services sincerely and diligently till 24.02.2013 when his services were terminated orally without any reason, notice and opportunity of hearing to the workman. It is alleged that the workman was assigned various other duties during the service period such as Peon, Electrical Helper and complaint operator etc. in the department of Sub-Divisional Engineer(Electrical) BSNL, Jind. The workman/claimant approached to the various authorities of the department for redressal of his grievances but his request turned to deaf ears. Ultimately, he served a legal notice on 15.02.2014(Annexure W-1) through his counsel to the authorities of BSNL reply of which is sent by the management is attached as Annexure W-2 with the claim statement. Ultimately having no any alternative remedy, he approached to the learned Assistant Labour Commissioner(Central), Karnal, for the redressal of his grievances along with copy of complaint register, peon book, message register, record of electrical installation/materials etc. to prove his engagement with the management but conciliatory efforts ended in failure and report is attached as Annexure W-3 with the claim statement. The claim is filed within limitation period of three years with the prayer that respondent-department be instructed to reinstate the workman with full back wages and all consequential benefits for the said post.

2. Respondents/managements has filed its written statement, alleging therein that workman was neither engaged directly by the department of BSNL nor paid any wages to him nor any attendance was made as such, there is no relationship of master and servant between the BSNL and workman. It is further alleged that BSNL has been getting the petty jobs through outsourcing by way of entering into a contract with the contractor for maintenance of various jobs and present workman may have been engaged by the contractor. Thus, the workman is not the employee of the department nor engaged through the process of recruitment rules as such, he has no legal right to invoke the provisions of ID Act. The copy of the agreement entered into with the contractor is attached as Annexure M1 to M4 with the written statement. It is denied that the claimant has been working with the management from May 2002 to 24.02.2013 continuously as alleged for the duties much less Peon, electrical helper and complaint operator etc. as alleged. Management has not terminated the services of the workman as is alleged in the claim petition because he was not in the service of BSNL at relevant time. It is further stated that since the claimant is neither engaged so the provision of ID Act are not applicable in this case. Reply of the legal notice of the workman has been duly sent to the workman. The present claim petition is not filed within limitation as he is engaged in the year 2002 and the present claim filed by the 15.10.2015 which is barred by time. The applicant/workman has not entitled for any relief whatsoever he prayed for as such, the reference may be answered in negative.

3. In support of his case, workman Satish Kumar has submitted his affidavit as Ex.WW1/A along with documents Ex.WW1/1 to WW1/5(colly) in support of his case. The affidavit made by the workman is in the line of the facts alleged

in the claim petition. During the course of cross-examination, this witness has stated that he has filed documents Ex.WW1/5 showing that he was working from the year 2002 to 2013 with the management and copy of these documents has been received by him from the official of the management. This witness has further alleged that documents bear the signature of JE and the original of documents are in the office of the management. He has further stated that his attendance was not marked by any official of the management and he was being paid wages in cash by SDO and his signature used to be obtained on salary slip. This witness had denied the suggestion made by the learned counsel of the management that these documents has been prepared by him falsely to create evidence in his favour and against the management. Thus, this witness had tried to prove the photocopies of the documents Ex.WW1/5(colly) regarding the different type of services rendered by him during the period of his tenure.

4. Management has examined Raj Singh Tanwar, working as SDE(E), who has filed his affidavit in evidence Ex.MW1/A and proved the documents Ex.MW1 and Ex.MW2. During the course of cross-examination, he has accepted that workman had not rendered his services in his office from the year 2002 to 2013. This witness has accepted that some times workman had rendered his services in his office. According to this witness, whenever workman rendered the services in BSNL it was only through the contractor engaged by the BSNL. This witness has clearly admitted that he is not in a position to tell the name of the contractors who had engaged the services of the workman for BSNL. When this witness is cross-examined by this Tribunal, he has accepted that record of the workman employed by the contractors regarding employees provident fund are maintained from the last preceding 4-5 years before that as no such record was maintained. It is pertinent to mention that this witness has accepted that he was posted in BSNL office on 04.08.2016 and was never posted in the office of BSNL Sub-Division Jind. Thus, this witness has no personal knowledge about the relation of the workman with the management and the contractors, who were engaged during the period from May 2002 to 24.02.2013.

5. I have heard the learned counsel of the workman Sh. Surender Pal and Sh. Anish Babbar, Ld. Counsel for the management and perused the file carefully.

6. Learned counsel or the workman argued that the workman has joined with the management in the month of May 2002 and worked till his retrenchment/termination on 24.02.2013. It is also stated that workman was performing the duties directly under the management office of BSNL situated at Jind under the control and supervision of SDO, Electrical(Jind) and performed all the duties assigned to him as is stated in the claim petition. Learned counsel of the workman has vehemently argued that the services of the workman was taken by adopting unfair labour practice and he was retrenched/terminated without giving notice or retrenchment compensation. Learned counsel has further contended that there is no specific denial by the management regarding the employment of the workman with the management instead management has alleged that he might have worked under contractor but nothing is placed on record in the form of documents to show that as and when he was engaged through contractor and payment was made to the workman.

7. Contrary to this, learned counsel of the management argued that he is neither workman nor appointed by the respondent-management for the work of Peon from the month of May 2002 to 24.02.2013. Learned counsel further argued that there did not exists relationship of master and servant or employer and employee between the workman and management as such, respondent-management has no liability towards the workman. Learned counsel of the management has also submitted that workman has utterly failed to submit cogent evidence in order to prove the direct relationship with the respondent-management. Learned counsel argued that the facts alleged in the written statement regarding the workman as he might have worked on need basis occasionally as and when required and was paid by the contractor is correct. He was never paid by the management directly as is alleged by the workman in his claim petition. Learned counsel further argued that workman has failed to prove by reasonable evidence that he was initially paid Rs.1,000/- and subsequently Rs.5,000/- as salary by the management or BSNL.

8. So far as the argument regarding the claimant being a workman is concerned. In this regard, reference can be made to the decision of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:—

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a

person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

9. Admittedly, management has not submitted any document regarding the employment of the workman in the establishment in spite of the fact that it has admitted that workman might have worked under the contractor or sometime in pursuance of agreement executed with the contractor as a general policy for petty work. Learned counsel of the management has drawn my attention towards the judgment of ***Bharat Heavy Electricals Ltd.(supra),*** in which a similar fact was alleged in the written statement and Hon'ble Supreme Court has observed that if the written statement goes to show that workman might have been engaged as an employee by a particular contractor, plain reading of the written statement could not suggest that employer is not sure as to whether the workman worked or engaged by the employer(Bhel). According to Hon'ble Supreme Court what is clear from the written statement is that employer(Bhel) has denied that workmen were engaged by Bhel or that the workmen were Bhels' workmen. Thus, according to the learned counsel of the management burden lies on the workman to prove the relationship with the management even though it is not specifically denied in written statement. I am of the opinion that argument advanced by the management-counsel has force in the light of the judgment of the Hon'ble Supreme Court in the case of ***Bharat Heavy Electricals Ltd.(supra)*** and that it cannot be observed that management has admitted the relations of workman with the establishment as master and servant.

10. Contrary to this, learned counsel of the workman argued that the facts alleged in the written statement is not clear about the contractors employed during the period 2002-2013 when workman rendered his services. Thus, according to the learned counsel of the workman, facts alleged in the written statement regarding the contractors and their tenures are very vague and very vague and pleading to that extent is not clear. It is pertinent to mention that Hon'ble Delhi High Court while referring the case of ***Rameshwari Devi Vs. Nirmala Devi, 2011(6), Scale 677***, ***decided by the Hon'ble Supreme Court*** has held in the case of ***AIIMS, New Delhi Vs. Uddal & Others, 2014(142) DRJ 569, decided on 21.04.2014,*** has held that fundamental principles, essential to the purpose of a pleading is to place before a Court the case of a party with a warranty of truth to bind the party and inform the other party of the case it has to meet. It means that the necessary facts to support a particular cause of action or a defence should be clearly delineated with a clear articulation of the relief sought. It is the duty of a party presenting a pleading to place all material facts and make reference to the material documents, relevant for purposes of fair adjudication, to enable the Court to conveniently adjudicate the matter. The duty of candour approximates uberrima fides when a pleading, duly verified, is presented to a Court. In this context it may be highlighted that deception may arise equally from silence as to a material fact, akin to a direct lies. Thus, it can be safely inferred that management has not put specific defence regarding the employment or non-employment of the workman in its establishment. In fact, it is not explained in the written statement or during the course of evidence by the management-witness that on what basis it is stated in the written statement that workman might have worked under the contractor. It is a settled position of law that fact has to be specifically admitted or denied in the pleadings of the parties. So, it is required by the management to either admit or denied the assertion of the workman in claim petition and it has to be specifically stated in the written statement as well as evidence led by the management to prove the relevant date and time and month for the employment of contractor under whom services were rendered by the workman under the agreement alleged to be executed with the contractors.

11. Learned counsel of the management argued that there is no dispute about preposition of law that onus to prove that claimant was in the employment of the management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he was worked with the employer for 240 days or more in a calendar year. In this regard, reference may be made to **Batala Coop. Sugar Mills Ltv. Vs. Sowaran Singh(2005) 8 Supreme Court cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda(2012) 1 SCC 47**.

12. Learned counsel of the workman argued that alleged contract executed as M1 is not a genuine contract instead it is shame and camouflage and has been prepared and submitted to avoid the liability of the respondent-management under the Industrial Disputes Act, 1947. Learned counsel has drawn my attention towards the content of documents Ex.M1 which reveals that it is simply an offer to the contractor mentioning the facts that amount quoted for the work carried on is on lower side. Hence, he was invited by the management to enter into agreement within a week in the office of the respondent-management. Similarly, MW2 is allegedly an agreement executed between the establishment and contractor namely Om Vaishnav Technocrates does not inspire confidence which is partially printed and partially handmade script mentioning the number of required workmen for rendering services for three months from its execution. There is nothing on record to prove that who were the contractors for the relevant period when workman rendered his services for so many years. To my mind, management can easily prove the genuineness of the agreements/contracts by filing documents pertaining to remittance of the EPF amount liable to be deposited by the contractor or contractors and payments made to the contractors for the services rendered by the workman and other labours to the respondent-management. There is nothing on record to prove that who were contractors for the remaining years running from 2003 to 2013 under whom workman rendered his services. Hence I am of the opinion that the alleged sole agreement for the

year 2002 does not inspire the confidence as such it is not a genuine and false with the category of shame and camouflage agreement.

13. The conclusion mentioned above find support from another angle of the facts alleged in the pleadings on record. The sole witness examined by the management Raj Singh Tanwar has clearly accepted that sometimes workman has rendered his services in his office of BSNL Electrical Sub-Division, Jind. According to this witness, whenever workman rendered his services in the BSNL office, it was only through the contractors engaged by the BSNL but this witness has further admitted that he is not in a position to tell that who was/were contractor or contractors who engaged the services of the workman. Thus, there is admission on behalf of the management-witness that workman has rendered his services in the office of the respondent-management. Hence, in the light of the judgment of the Hon'ble Supreme Court in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** it can be safely observed that even if the person who is engaged as part time or contract basis for doing any other kind of work and is duly paid wages, such a person would be covered by the definition of workman. In these circumstances, it stand proved that there exists relationship of employer and employee between the parties.

14. Moreover, the cases of Industrial Dispute has to be decided on the basis of principle of **preponderance of probability** rather than proof beyond reasonable doubt as is held by the Hon'ble Supreme Court in the cases of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S Singh Vs. State of Punjab and other(1999)8 SCC page 90,*** and in the case of ***State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013.*** The workman has not only stated on oath regarding the work assigned to him by the SDOs of the management but also submitted the volume of documents Ex.WW1/5(coly) (Photostat copies) pertaining to his duties and services rendered during the relevant period. It is pertinent to mention that nature of documents filed by the workman(though in the form of Photostat copies) Ex.WW1/5(colly) are relevant to nail the truth. Ex.WW1/5(colly) are related with the complaints book issued on 01.01.2003 peon book, message register, record of electrical installation/maintenance etc. out of which some are verified by the sub-Divisional Engineer having signature of the workman/claimant Satish authorizing workman to not the complaint and received the material from the department. In these documents, signature of workman and other workers are also identified by the Sub-Divisonal Engineer(Electrical) BSNL, Jind. Workman has categorically stated that original of the photocopies are with the management. Learned counsel of the management has contended that these documents should not be read in evidence as it is not proved according to the requirement of evidence. Certainly, the requirements of evidence act is strictly not applicable in the industrial dispute cases is altogether different from the way it is possible for the workman to put the documents if the original documents are not produced by the management before the Tribunal saying that workman is not directly employed by the management. It is pertinent to mention that the concerned Sub-Divisional Engineer(Electrical) who has verified these documents has to be examined by the management to deny his signatures and on these papers but concerned junior engineer has not been examined for the reasons best knows to the management. It is pertinent to mention that documents filed by the workman are related from the year 2002 to 2013 hence, this Tribunal is of the considered view that documents stand proved as evidence act is not strictly applicable in cases related to the industrial dispute cases. I am of the considered opinion that management was in better position to produce at least those documents for the relevant period of the workman alleged to be done by the workman to disapprove that duties have not been performed by the workman instead it is performed by some other person of the management.

15. Now the vital question arises for consideration is whether termination of the claimant from services by the management from 24.02.2013 is in accordance with law or in violation of provisions of Section 25-F of the Act. According to the testimony of the workman/claimant, the work of Peon on which he was working was of permanent nature and that his services were terminated by the management in violation of Section 25-F of the Act. After termination he had also approached to various authorities of the management for reinstatement and redressal of his grievance but his request is turned down by the management forcing him to serve a legal notice to the management. It is neither the case of the management that any notice or compensation in lieu of notice period was given to the claimant prior to termination of his services w.e.f. 24.02.2013 nor any such evidence is produced by the management on record. In these circumstances, this Tribunal has no hesitation to hold that the services of the claimant/workman were terminated by the management in violation of Section 25-F of the Act.

16. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the management to be illegal and void under the law.

17. Since there is no evidence on record that any valid notice was issued by the management to the workman at the time of termination or in lieu of such notice any compensation was paid to him, as such action of the management in terminating the services of the workman is held to be illegal and void.

18. Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that claimant was continuously in the employment of the management from May 2002 to 24.02.2013 though on daily wage basis. There is no show cause

notice or memo issued to the claimant/workman by the management. Moreover, the job of the workman is of perennial and regular nature which is also apparent from the documents filed by the workman. Though the workman has pleaded that he is unemployed from the date of his termination but learned counsel of the management has not put any question regarding his unemployment/employment and there is nothing on record as evidence that workman was employed after his termination. Thus, it is proved that workman was not gainfully employed to make livelihood for himself and his family. The management has not adduced any evidence to show that the workman was gainfully employed.

19. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limted(1979) 2 SCC 80,*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen along with payment of back wages.

20. However, Hon'ble Apex Court in the case ***General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L & S) 716,*** observed as under:—

> "8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether adhoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of award, which our experience shows is often quite large, would be wholly inappropriate.*** A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

21. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held as under:

> "The propositions which can be culled out from the aforementioned judgments are:
>
> ***"i) In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> ***ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

22. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25-F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

23. Having regard to the legal position as discussed above and the facts of the case that claimant was performing the duty as a Peon, which is perennial in nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service without back wages as workman has not stated in his claim statement as well as affidavit that he was jobless throughout the period after termination.

24. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1773.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सचिव, रक्षा मंत्रालय, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 1580/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-14012/14/2008-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1773.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1580/2009) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Secretary, Ministry of Defence, New Delhi & Others, and their workmen which were received by the Central Government on 23.09.2019.

[No. L-14012/14/2008-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 1580/2009
Registered on:-18.03.2009

Kanta Kumari D/o Sh. Karam Chand, R/o H.No.129, Mohalla Islamabad,
Gurdaspur, Teh. & Distt. Gurdaspur. …Workman

Versus

1. The Secretary, Ministry of Defence, New Delhi.
2. School Managing Committee, Army School, Tibri Cantt.
3. Sh. Ashok Kumar Jain, Principal, Army School, Tibri Cantt. Gurdaspur. …Respondents/Managements

AWARD
Passed on:-03.09.2019

Central Government vide Notification No. L-14012/14/2008-IR(DUI) Dated 02.03.2009, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of Principal, Army School, Gurdaspur in terminating the services of their workman Smt. Kanta Kumari w.e.f. 29.04.2006, is legal and justified? If not, what relief the workman is entitled to?"

1. Both the parties were served with notices. The workman/claimant filed her statement of claim with the averment that she was appointed as Ayah on 01.09.1991 in the Army School Tibri Cantt. by respondent no. 2 and remained on probation upto 31.03.1992 whereas here services were confirmed from 01.04.1993. Initially the Army School Tibri Cantt. was upto 5th standard which is now upgraded to +2 standard. It is averred that everything was going smoothly till 2005 when the respondent no.3 Sh. Ashok Kumar Jain, Principal joined the Army School. The respondent no.3 from the date he joined his duty as such in the school, he started asking and thereafter started pressurizing workman to visit his residence situated in the school premises for doing his personal work after the school duty. When workman refused to bow before the illegal demand of respondent no. 3, he threatened her to teach a lesson and subsequently his behavior towards became variable and inhuman, resulting heavy workload to her even her pregnancy period. It is further alleged that due to heavy duty work she started bleeding and ultimately incomplete abortion was done in the military hospital, Tibri Cantt. Ultimately having cordial relations with respondent no. 2 Principal got terminated services of the workman through respondent no. 2 without giving any opportunity to explain her position and handed over her the order of termination dated 26.04.2006. The workman went to the office of respondent no. 3 regarding her termination who on pretext of helping her got signatures on some paper. The workman put her signature on paper under the bona fide belief that the Principal will help her but it has transpired that he has ditched her and said signatures are used to legalize an illegality of the management whereas she had never confessed her guilt. The services of the workman have been terminated on the basis of alleged misconduct of her absence from services without serving any charge-sheet, holding any enquiry or following the procedure or the principle of natural justice. She was a regular and confirmed employee of the management and her services could not be terminated vide impugned order without holding regular enquiry. The termination of the services of the workman besides being illegal is also unfair labour practice and unfair and misusing the power hence, it is prayed that order of termination is liable to be set aside and she is liable to be reinstated in service with all consequential benefits.

2. Management has filed its written statement, alleging therein that claim petition is not maintainable against the respondent as the Army Public School is functioning under Army Welfare Education Society(AWES), which is registered under the Societies Registration Act XXI of 1860. Army Welfare Society and its institutions being run under Army Public School, Tibri are not state within the meaning of Article 12 of the Constitution of India. The Army Welfare Education Society is not a public body and it has duty towards its members only and its relations with the employees are governed by the statue. The contract of service between Army Welfare Education Society and its employees does not come under the domain of public law as such, reference dated 25.07.2018 made by the learned Assistant Commissioner (Central), Chandigarh under ID Act, 1947 vide which the case has been referred to the Hon'ble Tribunal is not based on fact. The establishment(Army Public School) is directily not under the control of Ministry of Defence, Govt. of India. It is neither a statutory body nor it is functioning under the control of Govt. of India. It is not even functioned by any government hence, it does not come under the ambit of Industrial Disputes Act. It is further alleged that the allegation made by the claimant in Paragraph 3 are totally baseless and contrary to the facts. The Principal had joined in 2004 and not in 2005 as alleged by the claimant. The allegations made against the respondent no.3 principal or staff of the school about her pregnancy and she was never entered in military hospital tibri as alleged. She did not apply for any medical leave to which she was entitled. The services of the workman were terminated in accordance with the rules and regulations laid down by the Army Welfare Education Society, New Delhi, after giving her sufficient time to defend herself. She was given a proper show cause notice vide letter dated 08.04.2006 which she never deemed to reply however, she has admitted in writing that she had tampered the attendance register. Accordingly, her services were terminated under the provisions of Article 186(g)(ii) of the Rules and Regulations of Army Schools/Army Public Schools on administrative grounds. Thus, the termination of the services of the claimant Kanta Kumari is as per rule and there is no misuse of power as alleged. Hence, it is prayed that she is not liable to be reinstated in service with all consequential benefits rather she needs to be prosecuted for tampering official records for her benefits and fabricating and concocting false stories and leveling false and baseless allegations against the management.

3. Parties were given opportunity to lead evidence. Workman Kanta Kumari has submitted her affidavit Ex.WW1 in the line of the facts alleged in the claim petition. She has admitted in her cross-examination that copies of warning letters/orders were issued by the management to her on time to time who were received by her marked as Ex.M1 to M8. She has also accepted that paper no.R-15 is a copy of show cause notice, which has been received by her. She has also accepted that the original acceptance of misconduct is R-16 and bears her signature but it is not in her handwriting. It is pertinent to mention that this document is shown by the management as reply to the show cause notice issued by the management in which she has admitted her mistake. Though, she has denied the content of letter allegedly written by her but she has not explained under what circumstances she has made her signature on a blank paper. It is also pertinent to mention that the contents of R-16 is in Hindi language hence, her denial about the letters-content did not convince the judicial mind. She has also admitted the signature on paper no.87 which is a undertaking to abide the school rules and

regulations framed by A.W.E.S. and school-management committee in which the ground of termination has already been mentioned. Thus, on the basis of the cross-examination of this witness, it is clear that she was aware with the rules and regulations of the management regarding the grounds of termination and she has also accepted mistake regarding erasing of time mentioned by her in the attendance register of school.

4. Management has examined Sh. Balkrishan, Lower Divisional Clerk in Army School, Tabri, who has filed his affidavit as Ex.MW1 with the documents Ex.MW1/1 to Ex.MW1/18. This witness has admitted that he has joined the school in the year 2009 and his knowledge is confined to the documents of the school-management. He has also accepted the termination of the workman on administrative ground. Witness Balkrishan has also accepted that termination of the workman is issued by the Chairman on recommendation of the Principal Sh. Ashok Kumar Jain. This witness has verified this fact that the claimant had been found guilty of tempering of record and it was one of the ground for her termination.

5. I have heard the oral arguments of Sh. N.K. Nagar, Ld. Counsel for the workman and Smt. Himani Kapila, Ld. Counsel for the management and perused the written arguments filed by the respective parties and evidence on record.

6. Learned counsel of the workman Sh. N.K. Nagar has contended that the services of the workwoman were terminated by the Chairman of the management on the basis of the misconduct alleged to be committed by claimant without serving charge-sheet, and holding on enquiry by paying three months salary in lieu of notice in accordance with Article 186(g)(ii) of the rules and regulations of the management, known as AWES Rules. It is further argued that principal of the management recommended to the competent authority, Chairman to remove the workwoman from service under Article 186(g)(ii). Learned counsel of the workman further argued that synonym rule of Article 186(g)(ii) was under test before the Hon'ble Apex Court in the case of ***Uptron India Ltd. Vs. Shammi Bhan, 1998(2) SCT page 169,*** in which it is held that government company, instrumentality or statutory corporation, authority within the meaning of Article 12 cannot terminate a permanent employee arbitrarily by giving one month notice or notice pay without notice, notwithstanding there is regulation to that effect in the contract of service or service rules. It is further contended that under the provisions of 'Industrial Law' specially Industrial Disputes Act, 1947, every termination may be framed thereunder. Learned counsel argued that claimant is workman as defined in Section 2(S) and respondent-management is within the four corners of the definition of 'Industry' as there is nothing on record to prove that it is a charitable institution and run without any gain. Thus, according to the learned counsel of the workman, this Tribunal has got jurisdiction to answer the reference made by the appropriate government.

7. Contrary to this, learned counsel of the management argued in the line of the written argument that claimant was habitual of coming late in school and she was warned in writing vide different letters which were duly received by her. Learned counsel further argued that she did not improve her habit of coming late to school and instead she tempered the attendance register by erasing the time of her arrival in the school register, resulting show cause notice dated 08.04.2016 to her but she did not reply to show cause notice rather she tender apology in writing accepting her mistake. Learned counsel further argued that she was informed about the service condition at the time of joining that her services will be governed by the AWES Rules and Regulations 1991, as mentioned in Para 3 of the agreement, which was signed by the claimant herself. Consequently, as per agreement and in accordance with the Article 186(g)(ii) of A.W.E.S. she is terminated by the competent authority. Thus, there is no any unfair dealing with the claimant/workwoman and impugned order is in consonance to the judgment passed by the Hon'ble Supreme Court of India in the cases of ***Bharat Heavy Electricals Ltd. Vs. M. Chandrashekhar Reddy & Oths, reported in Apex Court Judgment 2005(i) pages 257(SC), Chairman-cum-M.D. TNCS Corpn Ltd. & Others Vs. K.Meerabai, reported in Apex Court Judgment 2006(i) page 696(S.C.), Indian Drugs & Pharmaceuticals Ltd. & Anr. Vs. R.K. Sherwarmani, reported in Apex Court judgment 2005(ii), page 129(SC) and in the case of Syndicate Bank & Others Vs. Venkatesh Gururao Kurati in Apex Court judgment 2006(i) page 686(SC).***

8. Before averting to the evidence led by the parties and arguments advanced before this Tribunal, it is pertinent to mention those facts, which are admitted by both the parties. The appointment of claimant Smt. Kanta Kumari on 01.09.1991 as Ayah, confirmation on 01.04.1993 and subsequent termination on 29.04.2006 is not disputed. It is also not disputed in the light of the cross-examination of the claimant Kanta Kumari that she was served with warning letters by the Principal respondent no.3 which are on record as Ex.M1 to Ex.M9. It is also not disputed that the services of the claimant Kanta Kumari is terminated in pursuance of Article 186(g)(ii) of A.W.E.S. without giving any charge-sheet and without conducting any departmental enquiry, and order of termination is passed by the competent authority Chairman on recommendation of Ashok Kumar Jain, Principal.

9. From the pleadings of the parties and respective evidence led by the claimant as well as respondent-management, arguments advanced by the learned counsels of both the parties, following issue emerges for consideration by this Tribunal:—

i) Whether this Tribunal has got jurisdiction to decide the reference sent by the appropriate government?

ii) Whether the order of termination passed by the competent authority i.e. Chairman on recommendation of Sh. Ashok Kumar Jain, Principal, in accordance with Article 186(g)(ii) is just and fair?

ISSUE No.1:-This issue relates to the jurisdiction of the Tribunal regarding the entertainment of the reference made by the appropriate government and jurisdiction therein. Learned counsel of the management has contended that institution of Army School is functioning under Army Welfare Education Society, which is registered under the Societies Registration Act XXI of 1860, which are not state within the meaning of Article 12 of the Constitution of India. Hence, petition of the employee of the Army Public School is not maintainable. Learned counsel has contended that Army Welfare Education Society is not a public body and it has duty towards its members only. It is neither statutory body nor its relations with the employees governed by the statute as such, contract of service between the Army Welfare Education Society and its employees does not come under the domain of public law. Contrary to this, learned counsel of the workman has contended that the school run by the Army Welfare Education Society and is not sovereign functions strictly understood (alone) qualify for exemption not for the welfare activities or economic adventures undertaken by Government or Statutory bodies. Learned counsel of the workman placing reliance in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266,** argued that the institution i.e. Army Welfare Education Society is an "industry" in the light of the principle enunciated by the Hon'ble Supreme Court while dealing with the definition of "Industry". The Hon'ble Supreme Court has held as under:—

> ***"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.***
>
> ***(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.***
>
> ***(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).***
>
> ***(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.***
>
> ***(e) We overrule Safdarjung (supra), Solicitors' case (supra), Gymkhana (supra), Delhi University (supra), Dhanrajgiri Hospital (supra) and other ruling whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated."***

10. The argument advanced by the learned counsel of the management that school run by the respondent-management is neither statutory body nor it is functioning under the control of Government of India has certainly force. But the argument advanced by the learned counsel of the workman about the constitution and services rendered by the school certainly comes within the purview of "Civil Law" under "Labour Law Enactments" especially in view of the disputed questions involved as regards the status of employees and other matters in spite of the fact that it has its own rules and regulations and services governed by the contract entered into between management and its employees. This view finds support from the observation of the Hon'ble Supreme Court in the case of ***Union of India and Oths. Vs. Chhote Lal & Oths., arising Appeal(Civil) 921 of 1995 decided on 08.12.1995***.

11. Similarly, Hon'ble Supreme Court in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :—

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

Thus, the law propounded in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266** and ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, I am of the considered opinion that the present dispute certainly comes with the ambit of industrial dispute by virtue of claimant being within the definition of workman as well as respondent-management come within the definition of "Industry" even

though claimant/workwoman is employee of the respondent-management run not as a public institution. Thus, issue no.1 is decided accordingly.

ISSUE No. 2:- This issue relates to the fairness and legality of the termination order passed by the competent authority on the recommendation of the principal. Learned counsel of the workman has contended that the impugned order of termination passed by the competent authority(Chairman) is against the principle of natural justice as neither any charge-sheet is submitted nor enquiry is made nor opportunity is given to the workman to explain her position. Thus, according to the learned counsel, the impugned order is violative of Article 14 and 21 enshrined in the Constitution of India and termination order is liable to be set aside. Learned counsel has placed reliance in the case of ***D.K. Yadav Vs. J.M.A. Industries, 1993(3) S.C.T. page 537*** and in the case ***of Shamin Ban arising from Special Leave Petition(C) No.1079 of 1998 dated 06.02.1998*** decided by Hon'ble Supreme Court. On the other hand, learned counsel of the management contended that workman was given notice as per Ex.M1 to M9 and she has clearly admitted her guilt by tendering apology in writing which is filed as MW1/16. Learned counsel further argued that there is no provision of departmental enquiry and submission of charge sheet as per Article 186 of the Rules framed therein. The Rules 186 sub-Clause (g)(ii) deals with the termination of the employees runs as follow:—

(i) **On Disciplinary Grounds.** Services of employees found guilty of corrupt practices, breach of discipline or inefficiency can be terminated by following the procedure enumerated in Articles 171, 172. A show cause notice would be issued to the delinquent employee explaining the reasons why his/her services are proposed to be terminated.

(ii) **On Administrative Grounds.** The services of employees can be terminated on Administrative Grounds by giving three months notice or salary in lieu provided before terminating the service an employee shall be given a show cause notice explaining the reasons why his/her services are proposed to be terminated. Administrative grounds will cover the following:—

(aa) Inefficiency.

(ab) Delinquent Behaviour.

(ac) Redundancy

(h) A confirmed employee has as well the right to request termination of his or her services by giving three months' notice or surrendering salary in lieu. Accepting salary in lieu will be at the discretion of the Principal who may insist on his or her working for the duration of the notice.

(j) The vacation period can be counted as part of notice period for the purpose of request for termination of services by a confirmed employee provided the individual is entitled to vacation pay and is present on duty either on last working day prior to the commencement of vacation period or reports for duty on the first day after expiry of the vacation period.

Admittedly, the provisions enshrined in Article 186(g) does not stipulate any charge-sheet or departmental enquiry regarding the termination of permanent employee.

12. Next question which arises for consideration is whether the rules framed under Article 186(g) known as A.W.E.S. Rules & Regulations 1991 is in consonance with the stipulated law enshrined under Article 14 and 21 of the Constitution of India. It is pertinent to mention that this Tribunal has to find out whether principle of natural justice is implicit under action/decision even administrative in nature which involves civil consequences and it must be just, fair and reasonable non-objector in consonance with the principle of natural justice. The basic principle of natural justice is that no one should be condemn unheard which intends to prevent the authority from acting arbitrary effecting the rights of the concerned person. An order involving civil consequences must be consistent with the rule of natural justice. Even when administrative order which involves civil consequences must be made consistently with the rules of natural justice. The Hon'ble Apex Court in the case of ***Menka Gandhi Vs. Union of India(1978) SCC page 248,*** has held that the procedure prescribed for livelihood could be liable statutory rules or rules or orders affecting the civil rights and results in civil consequences could have to answer the requirement of Article 14. The principle of natural justice or part of Article 14 and procedure prescribed by law must be just, fair and proper and not arbitrary of this issue. Similarly Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity be given and domestic enquiry conducted complying with the principle of natural justice.

13. In the case of ***India Ltd. Vs. Shamin Ban(supra),*** clause 17(g) of certified standing order was under scrutiny by the Hon'ble Supreme Court. Hon'ble Supreme Court while dealing with the certified standing order has held that confirmant of permanent status of an employee guarantees security of services whether employed by the government or government company instrumental or statutory corporation of authority within the meaning of Article 12 and it cannot

take a permanent employee by giving one month notice or notice pay without notice notwithstanding to that effect in the contract of service or service rules. As per Hon'ble Supreme Court, the procedure prescribed must be just to fair and reasonable even though, there is no specific provision in statute or rules made thereunder for showing cause against action proposed to be taken against an individual which affects right of that individual. According to Hon'ble Supreme Court in such contract or in the rules if it does not provide opportunity of hearing to the employee which services are treated to have come to an end automatically is contrary to law.

14. Admittedly, claimant/workman was a permanent employee of the respondent-management and confirmant of permanent status of an employee guarantees the security of tenure. It is now well settled that the services of all the permanent employee whether employed by the government or government company or government instrumental or any other authority within the meaning of Article 12 cannot be taken either by giving him a month salary or three months notice or even without notice even there may be stipulation to the effect that either in the contract or service rules or in the certified standing orders.

15. So far as the case in hand is concerned, admittedly, a notice was issued to the claimant/workwoman in pursuance to Article 186(g) of the A.W.E.S. Rules and it is alleged that she has admitted her guilt and sought apology vide letter dated 15.04.2006 Ex.R-16. On the basis of this letter the services of the workwoman is terminated with the observation that she will be paid three months salary in lieu of three months notice by Brigadier Surjit Singh, Chairman SMC vide Order dated 29.04.2006. It is pertinent to mention that the Hon'ble Supreme Court while dealing with the case of ***Binni Ltd. & Oths. Ltd. Vs. Sadashive arising from Appeal (Civil)1976 of 198, decided on 01.01.2005,*** has justified the clause 8 of the agreement dated 12.03.1991 entered into by the respondent-appellant company with their employees. As per Clause 8 of the agreement, the management has right to terminate the services without assigning any reason by giving one month salary therein. In ***Binni case*** (supra) clause 8 as mentioned above, was held valid and legal by the Hon'ble Supreme Court by observing that where there is a contract between the litigants in such a case the express of the employees term of the agreement should normally governed the matter. The Hon'ble Supreme Court has observed that the public policy principle can be applied to the employment in public sector undertaking in appropriate cases but same principle cannot be applied to private bodies. According to the Hon'ble Supreme Court there are various labour laws which curtail the power of the employer from doing any anti labour activity. The services rules and regulations which are applicable to the government employment or public sector undertaking stand on different footing and they cannot be tested on same touchstone or enforced in the same manner. Admittedly, case in hand relates to the management terminating the services of claimant/workman on the basis of the provision of the Article 186(g) as is enumerated in the rules and regulations of the A.W.E.S. and claimant/workman is fully aware and has signed on the agreement Ex.MW1/1 and MW1/2 filed by the management. There is no dispute that management is neither government undertaking nor an authority coming within the purview of Article 12 of the Indian Constitution because it is not funded by public fund through government-agency. Thus, this is the case which is purely governed by the contract entered into between the workman and management. Hence, it is not appropriate to construe that this contract is against the principle of public policy and thus void and illegal under Section 23 of the Contract Act. Hence, the proposition of law laid down by the Hon'ble Supreme Court in the case of ***D.K. Yadav(supra)*** has no application in the present case.

16. There is another aspect of the case which may be analysed according to the provision of the Section 25-F of the Industrial Disputes Act, 1947. The provision of Section 25-F is mandatory in nature as is held by the Hon'ble Supreme Court in catena of cases. The questions which arises for consideration is whether the provision of Section 25-F is deemed to be complied in pursuance of Article 186(g)(ii) of the A.W.E.S. Rules and Regulations of the management. Admittedly, a notice was issued to the claimant/workman in pursuance of Article 186(g)(ii) of the A.W.E.S. and it is proved by the management witness namely Balkrishan, LDC, his affidavit as evidence and documents Ex.R-16. Documents filed by the management Ex.R-16 is admission of the claimant/workman that she inadvertently deleted/erased the time mentioned in the attendance register and this mistake will not be repeated in future. Workman/claimant has admitted her signature on Ex.R-16 by stating that principal of the school Ashok Kumar Jain had got her signature pretending that it is required to help her against the termination. The evidence of the workman/claimant does not inspire confidence that after her termination she went to the office of the Principal Army School namely A.K. Jain to get her help for revocation of termination order. It is noteworthy that as per claim petition principal was instrumental to get her terminated. In this background, the statement of the workman for seeking help of the Principal is neither plausible nor reasonable as is tried by the workman to justify her signature on Ex.R-16. The provision of Section 25-F is very much clear for issuance of notice or one month salary in lieu of notice before retrenchment/termination of employee. The claimant/workman herself has admitted that she was given a show cause notice for explaining her misconduct as well as three months salary through cheque. Thus, the provision of Section 25-F of the Act has been complied with even in the light of the A.W.E.S Rules and Regulations.

17. Having regard to the legal position as discussed above and the facts of the case, this Tribunal is of the firm view that management has not violated the Principles of Article 14 of 21 of the Constitution being a private establishment having its own fund and is governed by its own Rules and Regulations. The termination of the workman/claimant by giving a show cause notice and opportunity of hearing and admission made by the workman is in consonance with the legal proposition discussed above. Thus, this Tribunal is of the considered opinion that order of termination passed by the competent authority in accordance with Article 186(g)(ii) is just and fair and workman is not entitled for any relief. The award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1774.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महानिदेशक (वर्क्स) सीपीडब्ल्यूडी, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 19/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/56/2016-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1774.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2016) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director General (Works) CPWD, New Delhi & Others, and their workmen which were received by the Central Government on 23.09.2019.

[No. L-42011/56/2016-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 19/2016
Registered on:-16.06.2016

Late Sh. Mahipal S/o Chipar Singh, Sewerman through his wife Smt. Sona Devi. …Workman

Versus

1. The Director General (Works) CPWD, Nirman Bhawan, New Delhi.
2. The Executive Engineer, Faridabad, Central Division No.1, CPWD, NH-4, Faridabad. …Management

AWARD
Passed on:-17.09.2019

Central Government vide Notification No. L-42011/56/2016-IR(DU) Dated 01.06.2016, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

> **"Whether the demands of the union All India CPWD(MRM) Karamchari Sangathan (Regd.), in respect of regularising the services of the workman Late Sh. Mahipal Singh, Sewer man from the date of issue of orders by Director General(Works), Central Public Works Department, New Delhi under on time**

relaxation scheme w.e.f. 11.12.2006 is legal and justified? If yes, the work of the late workman Smt. Sona Devi is entitled to receive all terminal benefits and pensioner benefits or not?"

1. The facts, in brief, are that, the workman late Sh. Mahipal Singh was initially appointed as Sewerman w.e.f. 01.01.1987 on Hand Receipt and superannuated on 31.07.2011 and thereafter he expired on 04.11.2012. The workman had completed 24 years 6 months and 30 days regular service on Hand Receipt as per management's record which is Annexure-1. As per provisions of CPWD Manual and scheme of Temporary Status, the workman was entitled for regularization after completion of 2 years continuous service from the initial date of appointment of Hand Receipt etc. is Annexure-2. The DGW, CPWD had issued the orders under the scheme 'one time relaxation' for regularization of services of such workmen who were on the pay roll of the department and are over/under aged, management had regularized the services of such workmen under one time relaxation who were junior to the workman late Mahipal Singh w.e.f. 11.12.2006 which is marked as Annexure-3. The said scheme was for those who have completed more than 10 years regular service and the workman was also eligible for the same. The management have made the payment of gratuity to the workman but he had not been granted any pensionary benefits till date. The other workmen who were expired during the said period have also been granted the pensionary benefits which is clear cut discrimination amongst the workman which is Annexure 3-A. The DoPT issued an office order on 26.02.2016with regard to grant of pensionary benefits who had been granted the temporary status which is Annexure-4. During the conciliation proceedings before the Hon'ble Authority, the Hon'ble Authority wrote a letter on 03.02.2014 on the Director General (Works) of CPWD for regularization of service of the workman which is Annexure-5. Therefore, it is prayed that award for grant of pensionary benefits to Mrs. Sona Devi wife of late workman Mahipal Singh under one time relaxation scheme as has been granted to other co-workmen. To meet the end of justice.

2. Management has filed written statement, alleging therein that workman has no locus standi to file this claim against the management as there is no industrial dispute between the claimant and management. The claim petition is not maintainable as the applicant have not come with clean hands and concocted the material facts before the Hon'ble Tribunal, the claim appears to be less substantiated with facts hence, deserves to be dismissed being a misplaced ere-supposition.

3. At the stage of evidence, an application is moved with the order of the management dated 25.06.2019 regarding payment of arrear pension of deceased workman Mahipal Singh. Learned counsel of the claimant/workman made his statement before Tribunal that he has gone through the application and order made by the management regarding the payment of pension and regularization of workman as such, reference is satisfied by the management and there is no need for examination of witnesses and reference be answered on merit. The order of the management along with payment of arrear of pension initial-claimant's wife Smt. Sona Devi is also attached with the order regarding regularization of muster roll. In pursuance of conciliation and order of management, workman is satisfied and request is made that reference be answered accordingly.

4. It is now well settled position in law that any settlement arrived at between the parties is legally binding upon both the parties in terms of the provisions of Section 18 of the ID Act. In view of the amicable settlement, there is no requirement to proceed with the present reference. The application along with the office order between the parties regarding the regularization of deceased workman Mahipal Singh and grant of pension/gratuity to Smt. Sona Devi as well as statement of learned counsel of the workman shall form the integral part of the Award.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1775.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स महाप्रबंधक, मुख्य टेलीफोन एक्सचेंज, सोनीपत और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 37/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1775.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2016) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The General

Manager, Main Telephone Exchange, Sonipat & Others, and their workmen which were received by the Central Government on 23.09.2019

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 37/2016
Registered on:-24.02.2017

Sh. Rohtash, S/o Sh. Ram Dhari, R/o Village Machori, Post Office, Karaweri, Distt. Sonipat. …Workman

Versus

General Manager, Main Telephone Exchange, Sector 15, BSNL, Sonipat. …Management

Award

Passed on:-01.08.2019

1. The workman Sh. Rohtash, has directly filed this claim application under Section 2-A of the Industrial Disputes Act, 1947(hereinafter called the 'Act'), with the averment that he was appointed as Telephone Mechanic in the month of July 2001 and worked continuously as such at Mohana Exchange, Distt. Sonipat. The work and conduct of the applicant/workman remained good and satisfactory during his services in the management. He was terminated on 02.11.2015 by the respondent-management without any show cause notice, charge-sheet etc. which is a violation of the provisions of ID Act. It is further alleged that the applicant had completed more than 240 days continuously as required under Section 25 of the ID Act. The applicant/workman had made several requests to the management for reinstatement in service but management did not allow him to join the office and the juniors to the workman retained in service as well as new appointments has also been made by the management, which is against the provision of Section 32 and 34 of the ID Act. The workman has also filed a demand notice before the Assistant Labour Commissioner, Central, Karnal but of no use. It is therefore, prayed that the workman may kindly be taken back in service with continuity of service along with full back wages.

2. Respondent-management filed written statement, pleaded that the workman was neither appointed by the BSNL nor terminated his services and thus, there is no master and servant relationship between the workman and management. The BSNL Sonepat has regular staff of 200 employees for the core jobs like installation, operation and maintenance of equipments including both executive and non-executive staff. The workman may have been engaged by the contractor and management has been paid by him. The BSNL entered into a contract with different contractors during the period 2001 to 2015. The BSNL was making payment to the contractors only as per the agreement and he in turn management have making the payment to the labour engaged by him and thus, the workman has no case to invoke the provisions of ID Act against the management of BSNL and the petition is liable to be rejected. It is therefore, prayed that the claim of the workman/applicant be dismissed.

3. Opportunity was given to both the parties to adduce evidence but, claimant/workmen opted to abstain away from the proceedings. Consequently, opportunity of workman to adduce evidence is closed on 10.07.2019.

4. The management has also not filed any evidence as such, opportunity of both the parties for adducing evidence has been closed.

5. Heard the learned counsel of management and perused the record.

6. Since the claimant/workman has neither put his appearance nor has led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim Award'. Since there is no adjudication of claim petition or case on merits as such, it would not preclude the workman from seeking fresh reference or filing fresh case in accordance with Law.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1776.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मंडल अभियंता, भारत संचार निगम लिमिटेड कोरबा, छत्तीसगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 131/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.19 को प्राप्त हुए थे ।

[सं. एल-40012/33/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1776.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2012) of the Central Government Industrial Tribunal-cum-Labour Court Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Divisional Engineer, Bharat Sanchar Nigam Ltd. Korba, Chhattisgarh & Others, and their workmen which were received by the Central Government on 09.09.19.

[No. L-40012/33/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/131/12

Shri Kapil Das Mahant,
S/o Nankun Das Mahant,
R/o At Kashinagar,
Near Gauri Shankar temple,
Aara Machine Road,
Tehsil & Distt. Korba (CG) …Workman

Versus

Divisional Engineer,
Bharat Sanchar Nigam Ltd.
Behind Niharika Talkies, Korba
Chhattisgarh

Sub Divisional Officer,
Bharat Sanchar Nigam Ltd.
Behind Niharika Talkies,
Korba (CG). …Management

AWARD

Passed on this 23rd day of July 2017

1. As per letter dated 22-11-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, herein referred to by word 'Act' 1947 as per Notification No.L-L-40012/33/2012-IR(DU). The dispute under reference relates to:

> **"Whether the action of the management of (i) the Divisional Engineer and (ii) Sub Divisional Officer, BSNL Department (Behind Niharika Talkies), Korba, Tehsil and Distt. Korba (CG) in verbal terminating of services of Shri Kapil Das Mahant S/o Nankun Das Mahant, Ex Daily Wager w.e.f. 14-7-2011 is legal, proper and justified? If not, to what relief the workman is entitled to and from which date?"**

2. The case of the workman according to his statement of claim is that he was first appointed as daily wager against a permanent vacancy in the office of SDO(Phones), Korba, Tehsil & Distt. Korba and has been satisfactorily discharging his duties since 8-4-04, the date of his appointment till 30-7-2011, has worked more than 240 days in every year. Management had deducted his Provident Fund and other contributions from his wages from 8-4-04 till 29-3-06 and

had prepared a record of these deductions but thereafter i.e. from 30-3-06 to 13-7-2011, no attendance register, muster roll payment vouchers were prepared by management w.r.t. the present workman. He raised a demand regarding this and was terminated from service on 14-7-2011 under an oral order which is against law being violative of Section 25 G & H, Section 25-F,M & Rule 76 & 77 of Industrial Dispute Central Rules 1957, the workman has prayed for his reinstatement with all backwages and benefits setting aside his termination.

3. In its Written Statement of defense, the management has flatly denied the allegation of workman that he was in the service of management within the period 8-4-04 to 13-7-2011 at any point of time. In any capacity, the casual daily wager or a temporary or a permanent employee. hence, no question of his service record or record of PF deduction arises at the level of management. it was further pleaded that LTC, ID Card, Medical claim, EPF Deduction, logbooks are prepared only w.r.t. regular employees of the department. The workman was never engaged in any capacity even as daily wager or casual labor hence no question of PF deduction arises. May be he had been engaged by contractor working under the department, there is a ban on engaging even daily wages and casual labors in the department. No log book was ever issued to workman as under rules, it is issued only to regular employees. Accordingly, claiming the disengagement according to law, management has prayed for answering the reference against the workman.

4. At evidence stage, workman has examined himself on oath and has proved photocopy of logbook Exhibit W-1 which is 473 pages. Management has examined its witness Shri S.Khalco SDE(Legal) in the office of GMTD, BSNL, Bilaspur. No document has been filed and proved by the management.

5. At the stage of argument, none of the counsel for parties submitted any oral argument. They sought and were given opportunity for filing written argument.

6. After perusal of record in the light of rival claims/ submissions, following points arise in the case for determination:—

(1) Whether the termination of workman ex-daily wager w.e.f. 14-7-2011 is legal, proper and justified?

(2) Whether the workman is entitled to any relief?

7. Point for determination No. 1-

Respective claims of both the parties have been detailed on this point earlier. Before entering into merits, it is necessary to refer to some legal provisions which is as under:—

Section 2(S)-

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

Section 25 B:—

Definition of continuous service.— For the purposes of this Chapter,-- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer— (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i)

ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen. —No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.— Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25N. Conditions precedent to retrenchment of workmen.— (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

Rule 77. Maintenance of seniority list of workmen:—The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated to be arranged according to the seniority of their service in that category and cause a copy thereof to be pasted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment.

Rule 78

78. Re-employment of retrenched workmen:—(1) At least ten days before the date on which vacancies are to be filled, the employer shall arrange for the display on a notice board in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies by registered post to every one of all the retrenched workmen eligible to be considered therefor, to the address given by him at the time of retrenchment or at any time thereafter : Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the senior most retrenched workmen in the list referred to in rule 77 the number of such senior most workmen being double the number of such vacancies: Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen:

1[Provided also that if a retrenched workman, without sufficient cause being shown in writing to the employer, does not offer himself for re-employment on the date or dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion.] (2) Immediately after complying with the provisions of sub-rule (1), the employer shall also inform the trade unions connected with the industrial establishment, of the number of vacancies to be filled and names of the retrenched workmen to whom intimation has been sent under that sub-rule: Provided that the provisions of this sub-rule need not be complied with by the employer in any case where intimation is sent to every one of the workmen mentioned in the list prepared under rule 77.

8. In his statement on oath, workman has reiterated his claim that he was first engaged/ appointed as a casual daily wager on 8-4-04 and continuously worked till 13-7-2011. He worked for more than 240 days every year including the year preceding the date of his disengagement. He further stated that records regarding his payment and PF deduction etc. were prepared by management only for the period upto 29-3-06. He was given a logbook in which he used to make entries regarding the work done by him, photocopy of which he has proved. He further stated that the job taken by him by the management is of permanent nature. The juniors to him like Rajesh Kumar and James Bagh have been continued in service. He was not given any notice or compensation.

9. In his cross examination by management, he has stated that these photocopies were given to him under permission from SDO Mrs. Pathak. she had not granted any written permission. He admits that these photocopy documents not bear any seal of department nor any name of the department.

10. On the other hand, management witness has corroborated case of management setup in his written statement of defense and has stated that workman was never appointed or engaged against any permanent, temporary vacancy. He was not even engaged as daily casual labor for that period. Hence no question of deduction of PF or issue of logbook to him arises. The so called photocopy log book is fake as it is issued only to regular employment hence he had never been in continuous engagement of the management for a period of 240 days or more in the year preceding the date of his termination. It comes out from the above description of evidence that there is statement on oath of the workman which is rebutted by a statement on oath of management witness. Workman has filed so called logbook photocopy and has proved. Management has claimed that it is a fake document. This photocopy log book does not appear any seal or counter signature of any Officer/ Official of the management. it does not bear any name of the department. It is not from proper custody hence there is no occasion to treat it genuine.

11. Management witness has not been cross examined by workman hence it is uncontroverted. Furthermore, there is no document in support of statement of workman that junior to him were continued in engagement. The settled preposition of law on this point is that burden to prove the factum of continuous employment for a period of 240 days or more in the year preceding the date of his disengagement is on workman. The burden to prove violation of Section 25-H & Rule 76 & 77 of Central Rules is also on workman which could be proved by documents to corroborate his statement on this point.

12. Hence on the basis of above discussion, **it is held that the workman has failed to prove his continuous employment for 240 days in the year preceding date of his termination. He also failed to prove that employees junior to him were continued in service hence holding the disengagement of workman justified in law and fact, point for determination No.1 is answered against workman.**

13. **Point for determination No. 2**

14. In view of my finding in Point for determination No.1, workman is not entitled to any relief.

15. In the result, award is passed as under:—

(1) The action of the management of (i) the Divisional Engineer and (ii) Sub Divisional Officer, BSNL Department (Behind Niharika Talkies), Korba, Tehsil and Distt. Korba (CG) in verbal terminating of services of Shri Kapil Das Mahant S/o Nankun Das Mahant, Ex Daily Wager w.e.f. 14-7-2011 is legal and proper.

(2) Workman is not entitled to any relief.

Dated:23.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1777.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य कार्यकारी अधिकारी, महू छावनी, महू, छत्तीसगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 56/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.09.19 को प्राप्त हुए थे ।

[सं. एल-13011/01/2011-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1777.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 56/2011) of the Central Government Industrial Tribunal-cum-Labour Court Jabalpur, as shown in the Annexure, in the Industrial dispute between the employers in relation to Chief Executive Officer, Mhow Cantonment, Mhow Chhattisgarh & Others, and their workmen which were received by the Central Government on 09.09.19.

[No. L-13011/01/2011-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/56/2011

General Secretary,
Suraksha Asainik Karmchari Sangh,
Garden No. 19, Peat Road,
Mhow. … Workman/Union

Versus

Chief Executive Officer,
Mhow Cantonment,
Mhow …Management

AWARD

Passed on this 29th day of July 2019

1. As per letter dated 24-5-2011 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947,hereinafter referred to by word 'Act' as per Notification No.L-13011/1/2011-IR(DU). The dispute under reference relates to:

> "**Whether the demand of Suraksha Asainik Karmchari Sangh, Mhow for classification of Late Mata Prasad, Shri Prakash Chandra , Shri Umrao Singh(Retired), Shri Om Prakash and Shri Gopal for the post of firemen and benefits of the said post is justified? If yes, then what relief they are entitled to?"**

2. After receiving reference, notices were sent to the parties. Ist party workman filed statement of claim. The case of the workmen as alleged in their statement of claim is that they were first appointed as Maali by cantonment Board, Mhow w.e.f. 15-4-84, 1,1,85 & 5-11-85 respectively. Despite of the fact that they were appointed as Maali, management is regularly taking work of Fireman from them for 7 days in a week without any holiday in this period, requiring them to remain present within the Cantonment Board continuously during this period of 7 days for attending emergency calls but they are being paid only Rs.100 per month for their additional services which is unfair labor practice. Management keeps issuing orders to applicant workman to render their services as Fireman, advising them time and again not to leave the premises without seeking leave from competent authority of the fire station. They are not granted any leave for this period. Even Disciplinary proceedings were initiated against them for not responding to the siren of the fire station on 3-6-04 & 6-6-04 which shows that though the workmen were appointed as Maali but management is taking from them the work of Fireman day in and day out without proper classification whereas they deserve to be classified as the workmen because they are continuously rendering services as workmen and seldom they work as Maali. Workmen approached and demanded themselves to be classified as Fireman but their this prayer was rejected by management hence they raised a dispute with Labor Commissioner. After Failure of Conciliation, a reference was made by the Appropriate Government to this Court. Workman have accordingly prayed for their classification as Fireman and benefits of the said post.

3. In its statement of defense, it is the case of management that the workmen were appointed as Maali and they are working as Maali in the provisions of NIT Award and under Section 17 of the Industrial Disputes Act as well as Reference No. NP/2/1958, the duties of Fireman are taken from them occasionally. Management denied the claim of workman that they have been regularly working as Fireman on all the 7 days. It was further pleaded by management in view of performance of emergency duty as Fireman in the light of said award, these workmen are paid Rs.100/- per month as additional compensation irrespective of the fact whether they perform the duty of Fireman in that particular month or not. A routine office order has been issued to the workmen Maalis who are asked to perform the duties of

Fireman in addition to their regular duties to remain present in the campus and not to leave the campus without information. The workmen cannot claim their classification as Fireman because they have been initially appointed as Maali and management is within its rights to take additional work of Fireman from some workmen in the Maali cadre in the light of the aforesaid award for which they are paid additional compensation. Accordingly it has been prayed that the reference be answered against the workmen.

4. Workmen have examined on oath workmen Gopal Kaushal, Prakash Chandra, Omprakash Choudhary, they have been cross examined by management. workmen have filed documents, office order dated 27-8-04, office order dated 4-12-04, 26-10-05, 8-6-04 (all copies admitted by management). Rest of the photocopy of documents which are certificates of appreciation have not been admitted by management nor have they been proved by workmen.

5. Workmen has examined on oath Shri Rajendra Pawar, Chief executive Officer and has filed Gazette Notification SO No. 578 dt. 4-3-1960 which is award of R(NT)2/58 which is admissible in evidence formally.

6. None was present at the time of argument. Parties were given opportunity to file written argument but no written argument have been filed. I have gone through the record.

7. The reference is the point for determination in the present case.

8. Admitted between the parties is the fact that the applicant workmen are first appointed on the post of Maali. The award dated 4-3-1960 passed by National Industrial Tribunal at Bombay in R(NT)2/58 at Page 35 & 36 shows that Maalis can be deputed for fire fighting and further shows that different number of Maalis can be appointed in different cantonments for additional work of fire fighting on fire allowance which is different in different cantonments. For Mhow cantonment, it was fixed at Rs.4/- per month to 7 Maalis. It is the case of management that under this award, 7 Maalis are deputed on additional work of fire fighting for which they are paid additional compensation which has been increased from time to time. This statement of fact is not disputed/ controverted from the workmen side hence it is established now that management is within its right to take additional work of Fireman from 7 Maalis on paying additional compensation to them. Hence, the engagement of the applicant workmen for additional work of Fireman in the case in hand is fully justified in law in the light of the said award. The award itself provides for payment of additional compensation for this job. It no where provides for classification of their posts of such workmen as Fireman hence in the light of this factual scenario, the action of management in not granting the applicant workmen or not classifying them as Fireman as well not granting them the benefits given to the regular firemen is held justified in law and fact and the workmen are held not entitled to the relief claimed.

9. In the result, award is passed as under:—

(1) The demand of Suraksha Asainik Karmchari Sangh, Mhow for classification of Late Mata Prasad, Shri Prakash Chandra, Shri Umrao Singh(Retired), Shri Om Prakash and Shri Gopal for the post of firemen and benefits of the said post is not proper and legal.

(2) Workmen are not entitled to any relief.

10. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

Dated:29.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1778.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसर्स वैपकोस लिमिटेड जल संसाधन मंत्रालय, नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 103/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे ।

[सं. एल-42025/07/2019-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1778.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 103/2016) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Wapcos Limited, Ministry of Water Resources, New Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42025/07/2019-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 103/2016

Mr. Om Prakash S/o. Late Shri Pancham Lal,
Ro. 1/20, Khichripur,
East Delhi- 110091. …Workman

Versus

M/s. Wapcos Limited
(a Govt.of India Undertaking),
Ministry of Water Resources, 5th Floor,
Kailash Building, 26 KG Marg,
New Delhi-110001. …Management

AWARD

This Award shall decide a claim petition filed by the workman/claimant Ajay Kumar under Section 2-A of the Industrial Disputes Act, 1947(in short the Act) with the averments that he was appointed as a Messenger (SC) by the Management vide appointment letter dated 7/1/1991 and he had been performing his duties with diligence, sincerity and honesty he had unblemished and uninterrupted service record of his duty for a period of over 23 years and his last drawn salary was Rs. 31337/- per month. He never committed any act of misconduct but the Management terminated his services unlawfully and illegally vide letter dated 23/9/2014 w.e.f. 2/12/2013, without giving him any memo/show cause notice and without conducting any enquiry and without any compensation. The said letter inter-alia alleged that the workman had absented from duties w.e.f. 2/12/2013 which is totally illegal, unjustified and against the principle of natural justice. No enquiry was even conducted by the Management against the workman for his so called absenteeism from duty. After termination of his services, the workman visited the office of Management a number of times but he was not allowed to resume duty and thereafter he got sent a legal demand notice dated 20/4/2015 which was vaguely replied by the Management. Then the workman approached the Assistant Labour Commissioner/Conciliation officer who held conciliation proceedings for number of dates but the Management did not agree the take the workman back on duty . As such, the Conciliation Officer issued certificate that the workman may raise the dispute directly as per provisions of Section 2-A of the Act. It is pleaded that the workman is unemployed since after his illegal termination. He has prayed for reinstatement in service with full back wages and all consequential benefits.

2- Written reply was filed on behalf of management taking various preliminary objections, inter-alia that the workman was habitual of taking leave very frequently and repeatedly absented himself without any authority . The workman was sanction 74 days' extraordinary leave without pay from 18/6/2013 to 30/8/2013 in consideration of his application dated 23/8/2013. He was required to report for duty w.e4.f. 2/9/2013 (31/8/2013 and 1/9/2013 being Saturday and Sunday) but he neither reported for duty nor applied for further extension of leave. He in fact absented himself from duty for more than one year from 30/8/2013 to 23/9/2014 i.e. the date when his services were terminated. It is alleged that the workman had abandoned his duty for more than a year, as a result of which the Management was constrained to issue termination letter dated 23/9/2014 as per clause (ii) of the Terms of appointment letter dated 7/1/1991 as careless & reckless attitude of the workman towards his duties had hampered the working of the Management.. The termination of the workman simplicitor was in accordance with terms & conditions of his employment contract. Prayer has been made for dismissal of the claim petition with costs.

3- The workman filed rejoinder, reiterating his own case as set up in the statement of claim and denied the allegations of the Management.

4. Based on the pleadings of the parties, this Tribunal vide order dated 12.04.2017 framed the following issues and the case was then listed for evidence of the claimant union:

(i) Whether termination of the claimant is unjust, illegal, and against principle of natural justice ?

ii) Whether claimant is entitled for reinstatement in service alongwith back wages ?

iii) Whether the claimant was a habitual absentee and has voluntarily abandoned his job, as alleged ?

iv) Relief.

5- Claimant, in order to prove his case examined himself as WW1, whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 to Ex.WW1/8. On the other hand, the Management, in order to rebut the case of the claimant examined MW1 Shri Ajab Singh, A/R whose affidavit is Ex.MW1/A and he relied document Ex.MW1/1 (colly.). Management also examined one Shri Sant Ram, Deputy Manager as MW2 who also tendered his evidence by way of affidavit Ex.MW2/A and relied on documents Ex.MW2/1 and Ex.MW2/2. No other witness was examined by either of the parties.

6- Shri B.K. Singh authorized representative, advanced arguments on behalf of the claimant, whereas Shri Jitender Yadav, authorized representative advanced arguments on behalf of the management. I have gone through the records and my findings on above issues are as follows.

Issue No. 1 to 3

7. All these issues being inter-connected are taken up together and the same can be disposed of by common discussion,

8- From the pleadings of the parties and evidence adduced on record it is evident that the workman/claimant was appointed as a Messenger by the Management vide appointment letter dated 7/1/1991 (Ex.,WW1/1) and since then he worked for a period over 23 years. Thus, relationship of employee-employer between the parties is not in dispute. It is undisputed fact that services of the claimant were terminated by the Management vide letter dated 23/9/2014 (Ex.WW1/2).

9- It was argued on behalf of the claimant that the Management terminated services of the claimant unlawfully and illegally w.e.f.2/12/2013 vide letter dated 23/9/2014 without giving him any memo or show cause notice and without conducting any enquiry against him. Even no compensation in lieu of notice period was paid to the workman. As such, the action of the Management in terminating his services was illegal and against the provisions of Section 25-F of the Act.

10- Per contra, learned A/R appearing on behalf of the Management strenuously argued that in fact it was the workman/claimant who was a habitual absentee and he voluntarily abandoned the job because he remained absented from duty without any application and intimation, for more than one year from 30/8/2013 to 23/9/2014, thereby he hampered the work of the Management and in such circumstances, the Management was constrained and justified in issuing termination letter dated 23/9/2014 as per clause (ii) of the Terms of appointment letter dated 7/1/1991 (Ex.WW1/1).

11- This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to consider and decide the rival contentions of the parties. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. In cross examination he admitted that he had availed leave during the years 2012 and 2013. He clarified that in the year 2013 he had availed leave for 74 days for which proper application was given to the Management and he had joined his duty after sanction of the leave. He denied the suggestion that he remained absent from duty for about one year. He has filed on record a number of documents vis a vis copy of office orders issued by the Management company as Ex.WW1/3 to Ex.WW1/6 and legal demand notice dated 20/4/2015 as Ex.WW1/1

12- Testimony of MW1 Shri Javed and MW2 Shri Sant Ram is in line with the averments made in the written statement. Though he filed on record copy of the attendance sheet Ex.MW1/1 (colly.), however he admitted that in the attendance sheet, at appropriate places the word "L" was mentioned against the name of the claimant and the said word denotes Leave. **He showed his ignorance if the Management had issued any letter to the claimant when he** allegedly remained absent from duty. This witness firstly admitted that salary used to be credited to the claimant when he remained "absent" or on leave" for about one year but thereafter pleaded ignorance. He also showed ignorance if any letter for stopping the salary of the claimant was issued to the claimant or not. He could not say if the Management had issued any notice of three months' to the claimant as stipulated in the terms and conditions of the appointment letter (prior to termination of his services).

13- MW2 Sant Ram, Deputy Manager admitted that the workman was working in his Section under his supervision and control. He showed his ignorance if any memo or show cause notice was issued to the claimant or whether any

notice/charge sheet was issued to the claimant prior to his termination. He also showed ignorance if any retrenchment compensation was paid to the claimant or the Management had conducted any enquiry prior to termination of the workman/claimant.

14- I may mention that onus was upon the Management to prove that the claimant was a habitual absentee or that he has voluntarily abandoned the job. There is nothing on record to suggest that the Management has discharged the said onus or has proved that the claimant remained on leave unauthorisedly for one years or he himself had voluntarily abandoned the job. It has come in the evidence that the Management continued to pay salary to the claimant and had not issued any order for stoppage of his pay/salary. Even if it is presumed for the sake of argument that the claimant/workman had voluntarily abandoned the job, in that eventuality also it was incumbent upon the Management to issue call back notice to the claimant and/or to conduct enquiry against the claimant who was a regular employee & was serving the Management for the last about 23 years. The Management has not adduced any evidence to show that any call back notice was issued to the claimant or any domestic enquiry was conducted against him, prior to issuance of termination letter Ex.WW1/2. It would not be out of place to mention here that clause (ii) of the terms of appointment of the appointment letter Ex.WW1/1 issued to the claimant/workman, clearly provides that the workman will be on probation for one year from the date of his joining and that after satisfactory completion of probationary period, **the appointment shall be terminable on either side by 3 months' notice or salary in lieu thereof**. Needless to mention that the workman/claimant who was appointed on regular basis vide appointment letter dated 7/1/1991, might have completed the period of his probation as on 7/1/1992. The Management has not adduced any evidence –oral or documentary to show that any notice or compensation in lieu of such notice was issued to the claimant/workman prior to termination of his service. Even otherwise, the Management was under legal obligation to issue notice to the claimant before ordering his termination, or to pay one month's salary in lieu of such notice as required under Section 25-F of the Act. I may mention that provisions of Section 25-F of the Act which provides for conditions precedent to retrenchment of workmen, are absolute and inexorable and it reads as under :-

> "25-F : **Conditions precedent to retrenchment of workmen** –
>
> No workman employed in any industry **who has been in continuous service for not less than one year under an employer** shall be retrenched by that employer until –
>
> (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed years of continuous service or any part thereof in excess of six months; and
>
> (c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The above provision makes it clear that the employer is required to give notice to the appropriate Government apart-from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman. There is nothing on record to show that either any notice was issued by the Management or notice pay/compensation was paid to the workman/claimant prior to his termination either in compliance of the terms of appointment or as per provisions of Section 25-F of the Act. As such, the Management has violated the provisions of Section 25-F of the Act.

15- There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

16- Since there is no evidence on record that a notice or in lieu of notice period, any compensation was paid to the workman, as such action of the Management in terminating the services of the workman vide termination letter dated 23/9/2014 is held to be illegal and void.

17- Now the residual question is whether the claimant/work is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It stands proved on record that claimant was continuously in the employment of the Management from 7/1/1991 and he had already rendered service of more than 23 years, when his services were illegally terminated vide letter dated 23/9/0214. The workman/claimant has pleaded to be unemployed since the date of his termination and has prayed for reinstatement into service with full back wages. In April, 2013 he was working as Record Sorter and was drawing total emoluments of Rs.36,245/- as per pay slip filed on record. It would not be out of place to mention here that at present the workman must be running in the age of 60 years or so, as he had disclosed his age as 58 years when he entered the witness box on 8/5/2018. It is not clear as to what is the age of superannuation of the workman/claimant – whether he was supposed to be superannuated on attaining the age of 58 years or on attaining the age of 60 years. It is well settled position in law that there are number of factors which are

required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation `instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically be passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

18- Having regard to the aforesaid facts and circumstances of the case, to my mind, lumpsum compensation of Rs.5,00,000/- (Rupees Five Lakhs only) appears to be just and reasonable, and the same is payable to the claimant herein by the Management. Besides that, the claimant will also be entitled to other terminal/pensionary benefits like gratuity etc. and the Management shall also release the same to the workman as per rules. These issues are decided accordingly in favour of the claimant and against the Management.

Relief :—

19- As a corollary to the aforesaid discussion, it is held that workman/claimant shall be entitled to get lumpsum compensation of Rs.5,00,000/- (Rupees Five Lakhs only) besides terminal/pensionary benefits like gratuity etc. and the Management shall also release the same to the workman as per rules. In case the compensation amount and other benefits payable to the claimant/workman are not paid within three months from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum till realization of the amount. Award is passed accordingly.

Let copy of this Award be sent for publication as required under Section 17 of the Act.

Date : 5.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1779.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनुसंधान केंद्र मशरूम, भारतीय कृषि अनुसंधान परिषद, सोलन,(एच.पी).और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 58/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-42012/198/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1779.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2015) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, National Research Centre Mushroom, Indian Council of Agriculture Research, Solan, H.P. & Others, and their workmen which were received by the Central Government on 23.09.2019.

[No. L-42012/198/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 58/2015
Registered on:-08.12.2015

Santosh Kumari W/o Sh. Mukesh R/o Ward No.4, Solan Brewry Solan (HP). …Workman

Versus

The Director, National Research Centre for Mushroom, Indian Council of Agriculture Research, Chambaghat, Tehsil & District Solan, H.P. …Management

AWARD

Passed on:-03.09.2019

Central Government vide Notification No. L-42012/198/2015-IR(DU) Dated 19.11.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of National Research Centre for Mashroom, Indian Council of Agriculture Research, Solan in terminating the services of Smt. Santosh Kumari W/o Shri Mukesh Kumar w.e.f. 01.04.2014 is legal and justified? If not, what relief the workmen are entitled to and which date?"

1. The facts, in brief, are that the petitioner/workman was engaged as Safai Karamchari(Sweeper) with the respondent during the month of November 2009 and was performing her duty till her oral illegal termination by the respondent no. 01.04.2014. The last drawn salary of the workman was Rs.5,500/-. The services of the workman was terminated without any notice, retrenchment compensation without complying the provisions of Section 25-F of the Act, which is a mandatory provision of law. The termination of the petitioner is duly covered under Section 2-(OO) of the ID Act. The services of the juniors were retained in the management by the respondent, violating the provisions of Section 25-G and 25-H of the ID Act. The sudden removal of the petitioner/workman had made the integrity of the petitioner/workman doubtful and she is remained unemployed till the date of her termination. It is therefore, prayed that the Hon'ble Court may kindly be pleased to direct the respondent-management to reinstate the petitioner/workman in the employment of respondent Mushroom Centre retrospectively since the date of her illegal termination w.e.f. 01.04.2014 with full back wages, seniority and other consequential benefits.

2. Respondent/management has filed its written statement, stating therein that workman was never engaged by the Directorate National Research Centre of Mushroom as alleged. As a matter of fact, she was engaged by different contractors for various contractual job work assigned to them by the Directorate as per the policy/guidelines of the Government of India Annexure R-1 and Annexure R-2. The workman never worked with the management and never completed 240 days. The Directorate of Mushroom Research is a constituent of Indian Council of Agricultural Research which is an autonomous body with a mandate to conduct research and training in the field of agriculture. It is not engaged in any business, trade or industrial activity as such, and is not an industry in the meaning of Section 2(J) of the Act. There does not existed relationship of employer and employee between the respondent/management and workman. Thus, it is clear that the workman has no claim and there is no violation of the provisions of ID Act as such, the claim petition is liable to be dismissed with cost.

3. Claimant/workman Smt. Santosh Kumari did not turn up for paravi of the reference along with her AR Sh. J.C. Bhardwaj hence, after giving a reasonable opportunity for evidence, opportunity of the workman to produce evidence is closed vide order dated 09.05.2019.

4. Management has filed affidavit of Sh. H.N. Sharma, Administrative Officer along with Annexure R-1 and R-2 and respective agreements entered into between the management and contractors.

5. I have heard the arguments of learned counsel of the management Sh. S.K. Gupta in the absence of workman and her AR and perused the record.

6. Learned counsel of the management argued that claimant is neither workman nor appointed by the National Research Centre of Mushroom for the work of perennial nature. It is also contended that National Research Centre of Mushroom is not an 'industry' and workers were engaged as per guidelines of the government for temporary period

through licenced contractors. Learned counsel also contended that there was no relationship of employer and employee between the workman and management as such, respondent-management has no liability towards the workman. It is also contended that being the employee of contractors, if any liability occurs, it is between workman/claimant and contractors under whom he served during the employment period. Learned counsel of the management has placed reliance on the case of ***Physical Research Laboratory Vs. K.G. Sharma, Civil Appeal No.2663/1997 dated 08.04.1997.***

7. The first contention regarding the claimant is that whether the claimant comes within the definition of workman as is defined in Section 2(S) of the Industrial Disputes Act, 1947. I may mention that claimant was appointed as Safai Karamchari(Sweeper) as per her claim petition submitted before the Tribunal. In plain words the claimant was performing her duties as labourer/unskilled worker. She was not in supervisory or administrative post requiring her to perform only administrative duties. While interpreting Section 2(S) Hon'ble Supreme Court in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, has observed as follows:—

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

Thus Hon'ble Supreme Court has clarified that the definition of workmen also does not make any distinction between full time or part time employee or a person appointed on contract basis. There is nothing in plain language of Section 2(S) from which it can be infer that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. In view of the ratio of law enunciated in the above ruling, in my considered opinion the claimant herein admittedly falls within the definition of 'workman' under Section 2(S) of the Act.

8. The vital question which arises for consideration is whether the institution does not come within the definition of "Industry" as such, this Tribunal has no power to decide the reference as is argued by the learned counsel of the management. It is worthwhile to mention here that the definition of 'industry' as provided under Section 2(J) of the Act, is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine when an industry is and what the cognate expression 'industrial' is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. This part gives extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But, the second part alone cannot define 'industry'. An industry is not to be found in every case of employment or service. By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake. Before the work engaged in by an employer can be described against industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic and the wok for which workmen are employed must be productive and the workmen must be following an employment, calling or industrial avocation. The word 'industry' must take its colour from the definition and that it discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocation mentioned in relation to the employers."

9. Learned counsel of the management has drawn my attention towards the judgment of the Hon'ble apex court in the case of **Physical Research Laboratory Vs. K.G. Sharma(supra)** and submitted that respondent-management could not be termed as 'industry' in the light of the proposition held by the Hon'ble Supreme Court. Learned counsel of the respondent-management contended that there is nothing on record to prove that the research work of mushroom is marketable or has commercial value as it is used for research work only. Learned counsel also argued that object of National Research Centre of Mushroom is not commercial. Contrary to this, the learned counsel of workman has drawn my attention to the judgment of Hon'ble Apex Court in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266** in which Hon'ble Court had dealt at length with the ambit and scope of expression "industry" as defined in Section 2(J) of the Act and held as under:—

> ***"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some***

departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.

10. Though, nothing brought on record on behalf of the workman that the research work done by the respondent-management regarding mushroom is marketable and sold by the respondent-management to earn money. In this connection, it may be noted that neither in claim petition nor in written statement anything has specifically stated regarding the nature of organization and object of research carried on by the respondent-management. Thus, there is insufficient evidence on the part of both the parties to draw any clear cut finding regarding the nature and research carried on in the respondent-management. But to my mind, the facts of ***Bangalore Water Supply case***, in which it is observed that the pre-dominant nature of the services and the integrated nature of the departments as explained in the case of Nagpur case will be true test. The Hon'ble Supreme Court is of the view that the sovereign functions strictly understood(alone) qualify for exemption not for the welfare activities or economic adventures undertaken by the management or statutory bodies. According to the Hon'ble Supreme Court, even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). Question which is relevant for the purpose is that the respondent-management is undoubtedly involves in research of mushroom which is not only marketable but also of consumer use. In fact all the agricultural institutes or research laboratories are basically meant to research and produce some better fruits, vegetables and other commodities which are beneficial to the public at large. Contrary to this in case of Physical Research Laboratory vs. K.G. Sharma the Hon'ble Supreme Court had held clearly that knowledge so acquired by the research laboratory is not marketable or has no commercial value. The material discloses that the object with which the research activity taken by the Physical Research Laboratory is to obtain knowledge for the benefit of Department of space. Its object is not to render services to others nor in fact if does so, except in an indirect manner. The facts of the Physical Research Laboratory are distinguishable and on given facts arguments of management counsel has no force.

11. Next question which remains for consideration is whether the workman was employed by the management as Sweeper in the month of November 2009 and she worked till 01.04.2014 when her services were terminated by oral order of the management. This issue has to be proved by the workman but she did not turn up for submitting any evidence for the facts alleged in the claim petition. Perusal of record also reveals that there is neither any oral evidence nor documentary evidence to prove the relations of the workman with the respondent-management. Contrary to this, management has not only submitted the affidavit of Sh. H.N. Sharma, Administrative Officer, but also the copy of the contracts and rules and regulations for engagement of an employee which is in the line of the facts alleged in the written statement. The affidavit filed by the management is uncontroverted and unrebutted. Thus, it can be observed that this is a case of no evidence on the part of the workman as such, she is not entitled for any relief as stated in the claim petition.

12. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1780.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स दामोदर घाटी निगम, कोलकाता , और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 50/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 24.09.19 को प्राप्त हुए थे ।

[सं. एल-42011/81/2013-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1780.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the Industrial dispute between the employers in relation to The Damodar Valley Corporation, Kolkata & Others, and their workmen which were received by the Central Government on 24.09.19.

[No. L-42011/81/2013-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 50 of 2013

Parties: Employers in relation to the management of Damodar Valley Corporation

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. R. De, learned counsel

On behalf of the Workmen : None

State: West Bengal. Industry: Power

Dated: 16th September, 2019

AWARD

By Order No.L-42011/81/2013-IR(DU) dated 26.08.2013/02.09.2013 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether termination of services of Smt. Kanaklata Hazra, Smt. Monika Naya, Smt Archana Jana and Smt. Soma Roy w.e.f. 6.11.10 without following any provisions under Section 25(F) (G) (H) of the ID Act, in the guise of implementation of administrative memo dated 21.9.2010 is legal and justified? To what relief the workmen are entitled to?"*

2. When the case was taken up for hearing today, none appeared for the union, though learned counsel for the management was present. It transpires from record that this reference is pending in this Tribunal since 06.12.2013 and the parties entered appearance, union filed its statement of claim and the management also filed its written statement, but inspite of all opportunities, the union has not adduced any evidence in support of its claim as made in the statement of claim. Union is found absent since 07.01.2019, i.e., on three consecutive dates. Today, learned counsel for the management has also informed that since the union did not adduced any evidence, management also preferred not to adduce any evidence and prayed that the matter be disposed of.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of termination of the concerned four workmen as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 16th September, 2019

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1781.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स अधिकारी प्रभारी, सैन्य फार्म, अंबाला कैंट, हरियाणा और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 136/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-14011/02/2018-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1781.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 136/2018) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Officer Incharge, Military Farm, Ambala Cantt. Haryana & Others, and their workmen which were received by the Central Government on 23.09.2019.

[No. L-14011/02/2018-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 136/2018
Registered on:-27.04.2018

Sh. R.K. Parmar, General Secretary, INTUC Punjab, H.No.211-L, Brari,
P.O. Pratap Nagar, Nagal Dam, Distt-Ropar (Punjab), Punjab-140001. …Workman

Versus

The Officer Incharge, Military Farm, Ambala Cantt. Haryana-133001. …Management

AWARD
Passed on:-02.09.2019

Central Government vide Notification No. L-14011/02/2018-IR(DU) Dated 12.04.2018, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the demand of General Secretary, Indian National Trade Union Congress, Punjab in respect of Payment of Ad-hoc Bonus for the year 2014-2015 and 2015-2016 from the Management of Military Farm, Ambala Cantt. Board, Ambala, Haryana as per Government of India O.M. dated 29th August 2016 and 3rd October 2016(Annexure-E) to these 37 workers(list attached as Annexure F and G) who are serving in the Military farm for more than two decades back as labourers is legal and justified? If so, what relief the union/workmen is entitled to and from which date?"**

1. Both the parties were served with notices. The workmen appeared through Sh. R.K. Parmar, AR. An opportunity is given to the workmen for submission of the claim statement but, in spite of the several opportunities, claimant did not file any claim petition. Ultimately on 08.08.2019, learned AR of the workmen Sh. R.K. Parmar made a statement which is recorded separately that he does not press the present reference and it may be dismissed.

2. In view of the statement made by the learned AR of the workmen, the case is dismissed as withdrawn. Since there is no adjudication of the case on merits as such, it would not preclude the workmen from filing fresh case in accordance with Law. File after completion be consigned in the record room.

3. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1782.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, राष्ट्रीय अनुसंधान केंद्र मशरूम, भारतीय कृषि अनुसंधान परिषद, सोलन, (एच.पी).और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 57/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 23.09.2019 को प्राप्त हुए थे ।

[सं. एल-42012/197/2015-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1782.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 57/2015) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The The Director, National Research Centre Mushroom, Indian Council of Agriculture Research, Solan, (H.P.) & Others, and their workmen which were received by the Central Government on 23.09.2019.

[No. L-42012/197/2015-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 57/2015
Registered on:-03.12.2015

Mukesh Kumar S/o Sh. Masiha R/o Ward No.4, Solan Brewry Solan(HP). …Workman

Versus

The Director, National Research Centre for Mushroom, Indian Council of Agriculture Research, Chambaghat, Tehsil & District Solan, H.P. …Management

AWARD
Passed on:-03.09.2019

Central Government vide Notification No. L-42012/197/2015-IR(DU) Dated 19.11.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of National Research Centre for Mushroom, Indian Council of Agriculture Research, Solan in terminating the services of Sh. Mukesh Kumar S/o Shri Masiha w.e.f. 05.06.2013 is legal and justified? If not, what relief the workmen are entitled to and which date?"

1. The facts, in brief, are that the petitioner/workman was engaged as Safai Karamchari(Sweeper) with the respondent during the month of November 2009 and was performing his duty till his oral illegal termination by the

respondent on 05.06.2013. The last drawn salary of the workman was Rs.5,800/-. The services of the workman was terminated without any notice, retrenchment compensation without complying the provisions of Section 25-F of the Act, which is a mandatory provision of law. The termination of the petitioner is duly covered under Section 2-(OO) of the ID Act. The services of the juniors were retained in the management by the respondent, violating the provisions of Section 25-G and 25-H of the ID Act. The sudden removal of the petitioner/workman had made the integrity of the petitioner/workman doubtful and he is remained unemployed till the date of his termination. It is therefore, prayed that the Hon'ble Court may kindly be pleased to direct the respondent-management to reinstate the petitioner/workman in the employment of respondent Mushroom Centre retrospectively since the date of his illegal termination w.e.f. 05.06.2013 with full back wages, seniority and other consequential benefits.

2. Respondent/management has filed its written statement, stating therein that workman was never engaged by the Directorate National Research Centre of Mushroom as alleged. As a matter of fact, he was engaged by different contractors for various contractual job work assigned to them by the Directorate as per the policy/guidelines of the Government of India Annexure R-1 and Annexure R-2. The workman never worked with the management and never completed 240 days. The Directorate of Mushroom Research is a constituent of Indian Council of Agricultural Research which is an autonomous body with a mandate to conduct research and training in the field of agriculture. It is not engaged in any business, trade or industrial activity as such, and is not an industry in the meaning of Section 2(J) of the Act. There does not existed relationship of employer and employee between the respondent/management and workman. Thus, it is clear that the workman has no claim and there is no violation of the provisions of ID Act as such, the claim petition is liable to be dismissed with cost.

3. Claimant/workman Sh. Mukesh Kumar did not turn up for paravi of the reference along with her AR Sh. J.C. Bhardwaj hence, after giving a reasonable opportunity for evidence, opportunity of the workman to produce evidence is closed vide order dated 09.05.2019.

4. Management has filed affidavit of Sh. H.N. Sharma, Administrative Officer along with Annexure R-1 and R-2 and respective agreements entered into between the management and contractors.

5. I have heard the arguments of learned counsel of the management Sh. S.K. Gupta in the absence of workman and her AR and perused the record.

6. Learned counsel of the management argued that claimant is neither workman nor appointed by the National Research Centre of Mushroom for the work of perennial nature. It is also contended that National Research Centre of Mushroom is not an 'industry' and workers were engaged as per guidelines of the government for temporary period through licenced contractors. Learned counsel also contended that there was no relationship of employer and employee between the workman and management as such, respondent-management has no liability towards the workman. It is also contended that being the employee of contractors, if any liability occurs, it is between workman/claimant and contractors under whom he served during the employment period. Learned counsel of the management has placed reliance on the case of ***Physical Research Laboratory Vs. K.G. Sharma, Civil Appeal No.2663/1997 dated 08.04.1997.***

7. The first contention regarding the claimant is that whether the claimant comes within the definition of workman as is defined in Section 2(S) of the Industrial Disputes Act, 1947. I may mention that claimant was appointed as Safai Karamchari(Sweeper) as per his claim petition submitted before the Tribunal. In plain words the claimant was performing his duties as labourer/unskilled worker. He was not in supervisory or administrative post requiring him to perform only administrative duties. While interpreting Section 2(S) Hon'ble Supreme Court in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532***, has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

Thus Hon'ble Supreme Court has clarified that the definition of workmen also does not make any distinction between full time or part time employee or a person appointed on contract basis. There is nothing in plain language of Section 2(S) from which it can be infer that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. In view of the ratio of law enunciated in the above ruling, in my considered opinion the claimant herein admittedly falls within the definition of 'workman' under Section 2(S) of the Act.

8. The vital question which arises for consideration is whether the institution does not come within the definition of "Industry" as such, this Tribunal has no power to decide the reference as is argued by the learned counsel of the management. It is worthwhile to mention here that the definition of 'industry' as provided under Section 2(J) of the Act, is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine when an industry is and what the cognate expression 'industrial' is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. This part gives extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But, the second part alone cannot define 'industry'. An industry is not to be found in every case of employment or service. By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake. Before the work engaged in by an employer can be described against industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic and the wok for which workmen are employed must be productive and the workmen must be following an employment, calling or industrial avocation. The word 'industry' must take its colour from the definition and that it discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocation mentioned in relation to the employers."

9. Learned counsel of the management has drawn my attention towards the judgment of the Hon'ble apex court in the case of **Physical Research Laboratory Vs. K.G. Sharma(supra)** and submitted that respondent-management could not be termed as 'industry' in the light of the proposition held by the Hon'ble Supreme Court. Learned counsel of the respondent-management contended that there is nothing on record to prove that the research work of mushroom is marketable or has commercial value as it is used for research work only. Learned counsel also argued that object of National Research Centre of Mushroom is not commercial. Contrary to this, the learned counsel of workman has drawn my attention to the judgment of Hon'ble Apex Court in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266** in which Hon'ble Court had dealt at length with the ambit and scope of expression "industry" as defined in Section 2(J) of the Act and held as under:-

> ***"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.***
>
> ***(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.***
>
> ***(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).***
>
> ***(d) Constitutional and competently enacted legislative provisions way well remove from the scope of the Act categories which otherwise may be covered thereby.***

10. Though, nothing brought on record on behalf of the workman that the research work done by the respondent-management regarding mushroom is marketable and sold by the respondent-management to earn money. In this connection, it may be noted that neither in claim petition nor in written statement anything has specifically stated regarding the nature of organization and object of research carried on by the respondent-management. Thus, there is insufficient evidence on the part of both the parties to draw any clear cut finding regarding the nature and research carried on in the respondent-management. But to my mind, the facts of ***Bangalore Water Supply case***, in which it is observed that the pre-dominant nature of the services and the integrated nature of the departments as explained in the case of Nagpur case will be true test. The Hon'ble Supreme Court is of the view that the sovereign functions strictly understood(alone) qualify for exemption not for the welfare activities or economic adventures undertaken by the management or statutory bodies. According to the Hon'ble Supreme Court, even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable then they can be considered to come within Section 2(j). Question which is relevant for the purpose is that the respondent-management is undoubtedly involves in research of mushroom which is not only marketable but also of consumer use. In fact all the agricultural institutes or research laboratories are basically meant to research and produce some better fruits, vegetables and other commodities which are beneficial to the public at large. Contrary to this in case of Physical Research Laboratory vs. K.G. Sharma the Hon'ble Supreme Court had held clearly that knowledge so acquired by the research laboratory is not

marketable or has no commercial value. The material discloses that the object with which the research activity taken by the Physical Research Laboratory is to obtain knowledge for the benefit of Department of space. Its object is not to render services to others nor in fact if does so, except in an indirect manner. The facts of the Physical Research Laboratory are distinguishable and on given facts arguments of management counsel has no force.

11. Next question which remains for consideration is whether the workman was employed by the management as Sweeper? In the month of November 2009 and he worked till 05.06.2013 when his services were terminated by oral order of the management. This issue has to be proved by the workman but he did not turn up for submitting any evidence for the facts alleged in the claim petition. Perusal of record also reveals that there is neither any oral evidence nor documentary evidence to prove the relations of the workman with the respondent-management. Contrary to this, management has not only submitted the affidavit of Sh. H.N. Sharma, Administrative Officer, but also the copy of the contracts and rules and regulations for engagement of an employee which is in the line of the facts alleged in the written statement. The affidavit filed by the management is uncontroverted and unrebutted. Thus, it can be observed that this is a case of no evidence on the part of the workman as such, he is not entitled for any relief as stated in the claim petition.

12. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1783.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आयुक्त, दिल्ली नगर निगम (उत्तर), नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 57/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे।

[सं. एल-42011/140/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1783.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 57/2015) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commissioner, Municipal Corporation of Delhi (North), New Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42011/140/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DELHI

ID No. 57/2015

Shri Khem Chand through
Delhi Udhiyan Sangharsh Union,
B-5, Ram Gali, North Ghonda,
New Delhi - 110 053 …Workman

Versus

The Commissioner,
Municipal Corporation of Delhi(North),
9th Floor, Civic Centre, Minto Road,
New Delhi 110 002 …Management

Reference under clause (d) of sub-section(1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) was received from the Central Government, Ministry of Labour and Employment vide it orders No.L-42011/140/2014-IR(DU) dated 19.01.2015 for adjudication of an industrial dispute with the following terms:

> 'Whether Shri Khem Chand is entitled salary in the proper grade pay scale of Rs.950-1500 from 29.09.1989 Rs.3050-4590 from 01.01.1996 and Rs.5200-20200 as revised from time to time alongwith all consequential benefit as are privileged? If so, what directions are necessary in this respect?'

2 Claim statement was filed by Shri Khem Chand, workman herein, averring therein that he was in the employment of Municipal Corporation of Delhi, the management, in Horticulture Department since 1962 as chowkidar. The workman had unblemished and uninterrupted record to his credit. The workman at the time of his retirement on 31.08.2009 was working on the post of Garden Chaudhary, and he was working as such since 18.08.1993. The workman appeared in the Trade Test in 1988 and obtained 88 marks out of 100. 18 claimants who had obtained 90 marks and 6 others were promoted on the post of Garden Chaudhary in 1992 and their services were granted with effect from 29.09.1989 but the workman was not considered due to malafide intentions. Shri Ramhit, who was junior to the workman in seniority, was promoted to the post of Garden Chaudhary from 27.07.2009. Management conducted fresh test in 2005 and about 55 persons were promoted from 1988, 89, 99, 2001, 2002, 2003, 2004 and 2005 and full financial benefits were granted from back date but the claimant was denied the benefits. This amounts to sheer exploitation of labour and is violative of Articles 14, 16, 39(d of the Constitution of India. Hence, action of the management is wholly, illegal, bad, unjust and discriminated against as the workman was a regular employee having passed the trade test and juniors to him were promoted as Garden Chaudhary. Finally, it is prayed that the workman may be granted benefits of Garden Chaudhary with effect from 29.09.1989, the date his juniors were promoted.

3. Written Statement was filed by the management taking preliminary objection that the name of the management has been wrongly mentioned and the other material averments as contained in the statement of claim have been denied except the fact that the workman be put to strict proof of the averments made in his statement of claim.

4. Rejoinder was filed on behalf of the workman, which is on the same lines as the statement of claim filed by them.

5. On perusal of pleadings of the parties, this Tribunal vide order dated 02.12.2016, observed that no specific issue arises, except the reference already made by the Central Government for adjudication.

6. Workman has examined himself as WW1, whose affidavit is Ex.WW1/A and he relied on documents Ex.WW1/1 and Ex.WW1/2 to substantiate his claim. Shri Jag Pal Singh, Assistant Director (Horticulture) was examined on behalf of the management as MW1, whose affidavit is Ex.MW1/A. No other witness was examined by either of the parties.

7. I have heard Shri B.K. Prasad, A/R for the workman and Shri Shitij Vats, A/R for the management.

8. The only issue which requires determination in the case on hand is whether the workman herein is entitled for grant of pay scale of Rs.950-1500 from 29.09.1989, Rs.3050-4590 from 01.01.1996 and Rs.5200-20200 as revised from time to time alongwith consequential benefits. It is clear from statement of claim that initially the workman herein was appointed as Chowkidar and later on he was regularized on the same post alongwith usual allowances.

9. There is also ample evidence on record that the workman herein was performing duty as officiating Chaudhary. It is clear from perusal of document No.CH/RG/93/9 dated 18.08.93 (this document was allowed on 23.08.2019 on an application from the workman for taking on record the said document) that he is working as Acting Chaudhary from 18.08.1993. The office order clearly shows that different types of supervisory work was assigned to the workman herein. In fact, it is an official document issued by the management and the original of the same should have been filed so as to properly appreciate the contents of the document. Workman, in order to prove his case, has tendered in evidence his affidavit Ex.WW1/A, wherein material averments contained in statement of claim has been reiterated. It is specifically alleged in the affidavit that he was doing work of Chaudhary/officiating Chaudhary with effect from 18.08.1993.

10. To my mind, as similarly situated other workers who were performing duties of Chaudhary, i.e. acting Chaudhary have been granted pay scale of Garden Chaudhary after judgement dated 27.07.2011 rendered by the Hon'ble High Court in the case of MCD vs. Sultan Singh as well as MCD vs. Mahipal(WP 5550 of 2010), workman herein is also entitled for the pay scale of Garden Chaudhary. Operating portion of the judgement in Sultan Singh (supra) of the Hon'ble Division Bench is as under:

"28. Considering the entire facts and circumstances it is apparent that the claim of the respondents have always been that they should be paid the difference in pay of Mali/Chowkidar and the Garden Chaudhary as they were made to work on the post of Garden Chaudhary whereas the petitioner had first denied that they worked as Garden Chaudharies, then took the plea that the Assistant Director (Horticulture) was not competent to ask the respondents to work as Garden

Chaudharies and that the respondents cannot be appointed to the post of Garden Chaudharies in accordance with the recruitment rules. There is no doubt that respondents are not claiming appointment to the post of Garden Chaudharies on account of having worked on ad-hoc basis on the post of Garden Chaudhary contrary to rules or that some of them not having the requisite qualifications are entitled for relaxation.

29. In the entirety of facts and circumstances therefore, the learned counsel for the petitioner has failed to make out any such grounds which will impel this Court to exercise its jurisdiction under Article 226 of the Constitution to set aside the orders of the Tribunal dated 29th January, 2010 and 7th October, 2010 as no illegality or un- sustainability or perversity in the orders of the Tribunal has been made out.

30. The writ petition is, therefore, dismissed. Parties are left to bear their own cost."

11. It is further clear that SLP was also filed by Municipal Corporation of Delhi before the Hon'ble Apex Court vide IA No. 2 WP for special leave S20069/2011 MCD vs. Sultan Singh and others which was also dismissed as withdrawn vide order dated 09.04.2012. It is further clear that the Hon'ble High Court in Sultan Singh case strongly deprecated the stand taken by the management that the workmen were not possessing requisite qualification or have not qualified the test etc. It was clarified that since the workmen were discharging duties on the post of Garden Chaudhary, as such, workmen were entitled for the salary of Garden Chaudhary and competent authority need not look into anything else except the fact that the workman had worked as Garden Chaudhary.

12. It is not out of place to mention here that even if the workman herein was not a party in Sultan Singh case referred above, judgement of the Hon'ble High Court is binding on the management and management is required to implement the same in letter and spirit and the same is judgement in rem, and all similarly situated workmen are required to be accorded the benefit of the said judgement of the Hon'ble High Court, which have become final. The Hon'ble High Court has decided an abstract proposition of law, i.e. a mali who is performing duty as officiating/acting Chaudhary is entitled to the salary/wages of Chaudhary. Law is fairly settled that if a person is working on a higher post, on adhoc or temporary basis, even such workman is entitled to salary/wages of higher post, unless rules or regulations specifically provides otherwise. I find support to this view from Secretary vs. Lieutenant Governor Port Blair (1998 Lab.I.C. 598), yet in another case, Hon'ble Apex Court while considering that question of grant of benefits to similarly situated employees who were not party to the writ petition or lis in the case of State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015) 1 SCC 347 observed as under:

> "The moot question which requires determination is as to whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled from the judgments, cited both by the appellants as well as the respondents, can be summed up as under:
>
> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

13. In view of the discussions made herein above, it is held that Shri Khem Chand, the workman herein, is entitled to the pay scale of Garden Chaudhary with effect from 18.08.1993 till 27.07.2009, the date workman was promoted as Garden Chaudhary and as a corollary, management is liable pay the difference of wages of mali vis-a-vis Garden Chaudhary from the date when the workman herein was performing duties and functions of Garden Chaudhary till the date he was promoted as Garden Chaudhary, i.e. 18.08.1993 till 26.07.2009. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : 05.09.2019

A. C. DOGRA , Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1784.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, पीजी इंस्टीट्यूट ऑफ मेडिकल एजुकेशन एंड अनुसंधान, डॉ. आरएमएल अस्पताल,नई दिल्ली और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 303/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 16.09.2019 को प्राप्त हुए थे ।

[सं. एल-42011/76/2018-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1784.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 303/2018) of the Central Government Industrial Tribunal-cum-Labour Court-1, New Delhi as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, PG Institute of Medical Education & Research, Dr. RML Hospital, New Delhi & Others, and their workmen which were received by the Central Government on 16.09.2019.

[No. L-42011/76/2018-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, NEW DELHI

ID No. 303/2018

Ms. Lipika Sharma and 6 others,
(working as Technical Supervisor/Technician in PGIMER)
(Post Graduatate Institute of Medical Education & Research) of
Dr..Ram Manohar Lohia Hospital, Baba Kharak Singh Marg,
New Delhi 110001.
Represented by the
Hospital Employees Union,
Agarwal Bhawan, GT Road,
Tis Hazari, Delhi 54. …Workman

Versus

1. The Management of PG Institute of Medical Education & Research, Dr.RML Hospital, Baba Kharak Singh Marg, New Delhi 1100001 through its Director and M.S.

2. Directorate General of Health Services, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi. …Management

AWARD

This award shall decide a reference which was made to this to this Tribunal by the appropriate Government vide letter No.L-42011/76/2018/IR(DU) dated 02.11.2018 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether non regularization of Ms. Lipika Sharma and 6 others (list enclosed) by the establishment of PGInstitute of Medical Education & Research, w.e.f. from their initial appointment as indicated against their name in the list, is just, fair and legal ? If not, to what relief may be provided to the workmen ?'

2. Notices were issued to both parties. The claimants/workmen Lipika Sharma and 6 others filed their joint statement of claim with the averments that they were taken on the job by the Management on the post of Technical Supervisor/Technician, as per their service particulars given hereunder :-

Sl. No.	Name Shri/Smt.	Designation	Date of joining	Date of termination	Last Place of posting
1	Ms.Lipika Sharma w/o.Aakash Yadav	Technical Supervisor	20.4. 11	31.12.15	I.T.
2	Smt.Pushpa w/o.Gulshan Kumar Bhola	Technician	20.10.11	31.12.15	Graphic Lab
3	Arun Kant s/o. Shrikant Tiwari	Technician	25.4.11	31.12.15	Graphic Lab
4	Mandeep Kaur w/o. Amit Mehrotra	Technician	22.11.10	31.12.15	I.T.
5	Vagish Bhardwaj s/o.Uma Shankar Sharma	Technician	20.10.10	31.12.15	Molecular Lab
6	Aman Yadav s/o. A.K. Yadav	Technician	12.10.10	31.12.15	Molecular Lab
7	Manveer Singh s/o. Shri Bhadrapal	Technician	27.1.11	31.12.15	Biostatistics

It is the case of the claimants/workmen that the Management had advertised the post of Technical Supervisor and Technician and in pursuance thereof, the workmen herein alongwith other persons had applied for their respective jobs. The workmen had submitted their respective forms with the Management and after short listing their interviews were taken and they were declared successful. the workmen. Their medical and police verification was also got done by the Management. Ultimately, after the entire procedure, appointment letters were issued to the workman and since then they are continuously discharging their duties without any break. The management is issuing extension letters after every year to the workmen. The workmen who were engaged as Technicians were initially given a lumpsum salary of Rs.10000/- per month but after two years, it was enhanced to Rs.11000/- per month, whereas initial salary of Technical Supervisor was Rs.17000/- which was later on enhanced to Rs.19500/- per month. It is pleaded that since the management was not taking steps regarding regularization of the workmen, they raised dispute before the Conciliation Officer and during the proceedings, their services were illegally terminated by way of retaliation on 31/12/2015 and consequently, a complaint under Section 33-A of the Act was filed before the Ld.Conciliation Officer and due to failure of the conciliation proceedings, dispute of termination was referred to the Tribunal which was pending adjudication being ID No.62/17. It is also pleaded tehat the workmen are entitled to be treated as regular and permanent employees from the initial datge of t heir joining but the Management has not taken any steps to regularize their service in proper pay scale and allowance with retrospective effect i.e. from the initial date of their joining. Non regularization of services of the workman from the initial date of their joining is proper pay-scale & allowances and denial of proper salary at part with their counter parts on the principle of equal pay for equal work, with all arrears thereof, is totally illegal, bad and unjust, because the job against which the workman have been working is of a permanent and regular nature; employing persons on regular nature of jobs and treating them as a contractual workers or temporary workers and paying them lesser remuneration than those doing the identical work of the same value, amounts to unfair labour practice under Section 2(ra) of the Act; that the workmen have acquired the status of a permanent employee from the initial date of their respective joining after completing 90 days of continuous employment as provided in the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act,. 1946 and more so they have completed 240 days of continuous employment on regular basis; that posts of Technician and Technical Supervisors are lying vacant with the Management; that the workman fulfill all the requisite qualifications for their respective posts and working against vacant posts; and in fact working hours, responsibilities, education, recruitment procedure and nature of work discharged by the workmen concerned are same as being discharged by their regular counterparts. A demand notice was served upon the Management vide communication dated 8/10/2016 but to no response. It has been prayed that award be made in favour of the workmen, thereby directing the Management to regularize the services of the workmen in proper pay scale & allowance with retrospective effect from the initial date of their joining on their respective post and to pay them entire

difference of salary on the principle of "Equal Pay for Equal Work" either monetary or non monetary. Cost of litigation as provided under Section 11(7) of the Act may also be awarded to the workmen.

3. The statement of claim has been resisted by the Management who filed written statement and took preliminary objections that PGIMER was established by Ministry of Health & Family Welfare, Govt. of India in 2008 and same is a separate entity and it has no budgetary support. PGIMR and Dr.RML Hospital are subordinate officers of DGHS. As per explanation to Section 2(7)(j) of the Act, educational institutions are not included under the definition of "Industry" and as such, the PGIMER is not an industry and the claim petition is not maintainable. While denying the averments of the claimant, it has been stated that all the seven workmen were engaged initially for a period of one year from the date of their joining or till regular incumbent joins the post and their tenure was extended on year to year basis on the same terms and conditions with the approval of Competent Authority pending finalization of recruitment rules. Technical Supervisor was engaged on consolidated remuneration of Rs.17000/- per month, whereas Technicians were engaged on consolidated remuneration of Rs.10000/- per month and increments were given @ 5 per cent in 20111, 2012 and 2013 as per instructions issued by the Ministry. It is alleged that the workmen were recruited purely on contract basis through walk in interview on the basis of terms & conditions of appointment. Services of the workman appointed on contractual basis were terminated w.e.f. 31/12/2015 in compliance of the order dated 17/9/2015 of DGHS. In nut shell, case of the Management is that since the workmen were engaged on contract basis, their services can not be regularized and by doing so, it will be creating another mode of public appointment which is not permissible. Prayer has been made for dismissal of the claim petition.

4. No rejoinder was filed on behalf of the claimants. On the pleadings of the parties, following issues were framed on 1/7/2019 :-

i) Whether the claim petition is not legally maintainable in view of various preliminary objections ?

ii) In terms of reference ?

5. The workmen /claimants examined themselves as WW1 to WW6 and tendered their evidence by way of affidavits Ex.WW1/A to Ex.WW6/A respectively & relied on number of documents.

6. On the other hand, the Management examined one Shri Arvind Kumar, Registrar of PGIMER who filed his affidavit Ex.MW1/A and relied on the document Ex.MW1/1.

7. I have heard Shri Rajiv Aggarwal, A/R for the claimants and Shri Atul Bhardwaj, A/R for the Management. I have also gone through the records carefully. My findings on above issues are as follows.

Issue No. 1:-

8. Ld. AR appearing on behalf of the Management strongly contended that the Management No.1 PGIMER wherein the claimants were working purely on contract basis, is not an industry under Section 2(j) of the Act because the said institution is doing research work with no profit motive and as such the claim petition is not maintainable before this Tribunal.

9. Per contra, learned A/R for the claimants submitted that since the work done by the Management Hospital is systematic, it falls within the definition of term "industry".

10. It the worthwhile to mention here that the definition of 'industry' as provided under Section 2(J) of the Act, is in two parts. In its first part it means any business, trade, undertaking, manufacture or calling of employers. This part of definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine when an industry is and what the cognate expression 'industrial' is intended to convey. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. This part gives extended connotation. If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But, the second part alone cannot define 'industry'. An industry is not to be found in every case of employment or service. By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake. Before the work engaged in by an employer can be described against industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services. Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic and the work for which workmen are employed must be productive and the workmen must be following an employment, calling or industrial avocation. The word 'industry' must take its colour from the definition and that it discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocation mentioned in relation to the employers."

11. In **State of Bombay Vs. Hospital Mazdoor Sabha, 1960(1) LLJ 251**, Hon'ble Supreme Court had observed that under Section 2(j) of ID Act, an activity can and must be regarded as an industry even though in carrying it out, profit motive may be absent.

12. Hon'ble Apex Court in the case of **Banglore Water Supply & Sewerage Board Vs. A. Rajappa 1978(36) FLR 266** dealt at length with the ambit and scope of expression "industry" as defined in Section 2(J) of the Act and held as under ''—

"(a) Where a complex of activities some of which qualify for exemption, others not involves employees on the total undertaking some of whom are not "workman" as in the University of Delhi case (supra) or some departments are not productive of goods and services, if isolated, even then the predominant nature of the services and integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions strictly understood (alone) qualify for exemption not the welfare activities or economic adventures undertaken by Government or Statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

(e) We overrule **Safdarjung (supra)**, Solicitors' case (supra), Gymkhana (supra), **Delhi University (supra)**, Dhanrajgiri Hospital (supra) and other ruling whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (supra) is hereby rehabilitated."

13. In **Christian Medical College and Brown Hospital Vs. Labour Court, 1996(2) LLN 697,** it has been held by Hon'ble Punjab & Haryana High Court that Hospital & Medical College is an industry. Similarly, in **Simla Devi Vs. Presiding Officer, 1997(2) LLN 305**, Hon'ble Punjab and Haryana High Court held that Hospital is an industry and a part time workman in hospital is a workman. Our own High Court in the case of **AIIMS Vs.Raj Singh, 2009(2)SCT 9(Delhi)** observed that the AIIMS does not cease to be a hospital merely because research is also carried on therein and applying the law as explained in Bangalore Water Supply (supra), AIIMS was held to be an "industry" within the meaning of Section 2(j) of the Act.

14. Perusal of the record shows that MW1- Arvind Kumar – sole witness of the Management has clarified in his cross examination that the work done in the Management is systematic by way of cooperation and coordination between the Officers and subordinate employees and that purpose of the Management is to produce the doctors to serve the countrymen i.e. people at large.

15. Having regard to the ratio of aforesaid decisions, it is fairly settled that hospital, research institutes and training centre render valuable material services to the community for qualifying for coming within Section 2(j) of the Act. To my mind, PGIMER attached to RML Hospital would not cease to be an "industry" inspite of the fact that the hospital is not embarking upon any economic or profit making activity and it is accordingly held that the Management falls within the definition of "industry" qua the claimants who were working on the post of Technical Supervisor or Technician and that the claim petition is maintainable. This issue is accordingly decided in favour of the claimants & against the Management.

Issue No. 2 :-

16. Short question/issue arises for consideration is as to whether the workmen/claimants who are working with the Management are entitled to be regularized to the posts of

17. Ld. A/R for the claimants argued that the Management/s by adopting unfair labour practice, are depriving the claimants their legitimate right of equal pay for equal work, in the regular pay scale despite the fact that they were selected after due process of interview, police verification and medical examination etc. conducted for appointment of regular employees. He also argued that the workmen/claimants are entitled to be regularized from the date of their initial appointment.

18. Per contra, learned A/R appearing for the Management strenuously argued that the claimants were engaged purely on contractual basis. The claimants being contractual employees has neither got any right to get wages/salary at part with their regular counterparts, appointed on permanent basis, nor has got any right to be regularized in service. He relied on the judgements in the case of **State of Karnataka Vs. Uma Devi 2006 (4) SCC 1; Surender Prasad Tiwari Vs. UP**

Rajya Krishi Utpadan Mandi Parishad (Appeal civil) 3981 of 2006 to buttress his submission that casual workers/ contractual labour has got no right to be regularized.

19. There is no dispute about preposition of law that there is no fundamental right of those workers who have been employed as daily wager or temporarily or on contractual basis to claim that they have a right to be absorbed in service. Even such workers even serving for a long number of years will not become entitle to claim regularization if he is not working against a sanctioned post.

20. Hon'ble Supreme Court in the case of **Hari Nandan Prasad and another Vs. Food Corporation of India** 2014) 7 Supreme Court cases 190 held as under :-

> "… We are of the opinion that when there are posts available, in the absence of any unfair labour practice, the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of year. Further, if there are no posts available, such a direction for regularization would be impressible. In the abovesaid circumstances, giving of direction to regularise a person, only on the basis of number of years put in by such a worker as daily wager., may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. **However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality of upholding Article 14 rather than violating this constitutional provision."**

21. Our own High Court in the case of **Project Director, Department of Rural Development Versus its Workmen through D.P.V.V.I.E.Union (W.P. –Civil No. 17555/2005 – decided on 29/3/2019)** after referring to number of judgments including the judgement of Hon'ble Apex Court in the case of **Secretary, State of Karnataka and other Vs Uma Devi, 2006 (4) SCC 1** and of Delhi High Court in the case of **Anil Lamba and others Vs. GNCTD WP (Civil) No.958/2018**, has observed in para 27 and 29 as under :-

> 27. "In my view, the rigors applicable for grant of regularization in cases of public employment cannot be read in such a manner so as to take away the wide powers of an Industrial Tribunal under the ID Act. It needs no reiteration that the basic tenets of service law are very different from those of labour law and therefore, the safeguards put in place to protect the interests of workmen cannot be conflated with the service rules and regulations applicable to government employees in the public sector. Both of them stand on different footing and can neither be tested on the same touchstone nor enforced on the same manner. Therefore, I am of the opinion that neither the decision in Uma Devi (supra) and Anil Lamba (supra) has any application to the facts of the present case. **Even otherwise, a perusal of the decision in Uma Devi (supra) shows that with respect to the regularization of temporary employees, the Supreme Court itself had specifically carved out an exception for those contractual employees who, though appointed regularly, had completed at least 10 years of service. In the facts of the present case, the respondents/workmen have as on date completed more than twenty-two years of service, and therefore, even as per the decision in Uma Devi (supra), they would be entitled to the regularization of their services."**
>
> **…….**
>
> **29. Thus,** in the light of the observations of the Supreme Court in Ajaypal Singh (supra), ONGC (supra) and Umrala Gram Panchayat (supra) as also of this Court in Ram Singh (supra), I find that the petitioner's reliance on the decision of the Supreme Court in Uma Devi (supra) and of this Court in Anil Lamba (supra) is wholly misconceived. **In my opinion, once the Tribunal was of the view that the petitioner was indulging in unfair labour practice, it was well within its domain to pass an order, directing the petitioner to regularize the respondents' services……"**

From the above rulings, it is clear that ordinarily the Labour Court/Industrial Adjudicator should not issue direction for regularization of the workman engaged/working on casual/daily wage basis irrespective of his length of service unless there is a Scheme/policy of the Management & unless **similarly situated workmen have been regularized by the employer/Management under the said policy/Scheme and benefit of such scheme/policy has been declined to the other. However, the Industrial Tribunal is vested with powers to curb unfair labour practices being adopted by the employer/s.**

22. To decide the issue in proper perspective, it would be worthwhile to refer the oral as well as documentary evidence adduced on record. I may mention that Testimony of the claimants who appeared in the witness box as WW1

to WW6 is in line with the averments made in the claim petition. They filed on number of documents on record viz. statement of claim submitted before the ALC/Conciliation Officer as Ex.WW1/1; espousal certificate as Ex.WW1/2; complaint made to ALC under Section 33-A of the Act as Ex.WW1/3; offer of appointment and office orders issued by the Management regarding appointment of the claimant/workman Ms. Lipika Sharma on contract basis and their extension as Ex.WW1/4 to Ex.WW1/10; office order dated 31/12/2015 whereby services of the claimants were terminated as Ex.WW1/11; failure of conciliation proceedings as Ex.WW1/12 due to non attendance by the Management. Documents Ex.WW2/1 to Ex.WW2/3' Ex.WW3/1 to Ex.WW3/3; Ex.WW4/1 & Ex.WW4/2; Ex.WW5/1 and Ex.WW6/1 are also the office orders issued by the Management regarding appointment of other claimant/workmen herein on contract basis and their extension from time to time. The claimants were cross examined at length but nothing material came out in their cross examination to shake their testimony.

23. Testimony of MW1 Arvind Kumar is in line with the contents of the written statement. However, he admitted that the details regarding date of joining, designation, date of termination and last place of posting of the workman as detailed in para 1 of the claim petition are correct. He also admitted that the posts for which the workman were engaged/appointed were advertised, under the category of Technical and Supervisor in various leading newspapers including Hindustan Times. He also admitted that number of other candidate had applied for the posts and the workmen were selected after interview conducted by the Selection Board consisting of various doctors/experts . He also admitted that last drawn wages of the workmen working as Technical Supervisor was Rs.19500/- and that of Technicians was Rs.11500/- per month. He further admitted that the workmen were working in the pay-band II in the pay-scale of Rs.9300-34800/- with grade pay of Rs.4600/- and pay band of Rs.5200-20200 with grade pay of Rs.2000/- against vacant posts. He conceded that the claimants were working against permanent nature of job, which is still continuing.

24. It is manifest from the pleadings of the parties and evidence adduced on record that the claimants/workmen herein were engaged by the Management sometimes during the period from October, 2010 to April, 2011 (to be more precise as detailed in para 2 above) on the post of Technical Supervisor / Technician, after due process viz. conducting of interview by the Selection Board consisting of Medical experts/professionals; selection of claimants/workmen herein as per recommendations of the Selection Board and thereafter the workmen were put to police verification and medical examination/s. Thereafter, the claimant Lipika Sharma (WW1) was appointed to the post of Technical Supervisor on contract basis at a consolidated remuneration of Rs.17,000/- per month which was subsequently enchanced to Rs.19500/, whereas other claimants Smt. Pushpa, Arun Kant, Mandeep Kaur, Vagish, Aman Yadav and Manveer Singh were appointed on the post/s of Technician/s on a consolidated monthly remuneration/salary of Rs.10,000/- which was enhanced to Rs. 11500/- per month. This factum is also evident from the documents Ex.WW1/4 to Ex.WW1/10 and The workmen herein were appointed **against sanctioned vacant posts,** initially for a period of one year and their term was extended from time to time. MW1 Arvind Kumar – sole witness of the Management has admitted that the claimants were working against vacant posts of Technical Supervisor/s carrying pay scale of Rs.9300-34800/- with grade pay of Rs.4600/- and Technicians carrying pay-scale of Rs.5200-20200/- with Grade Pay of Rs.2000/-. The posts to which the claimants/workmen are working are of regular and perennial nature, which fact is admitted to by MW1 – witness of the Management. It clearly emerges from record that the claimants/workman were paid consolidated wages/salary and not the regular pay-scale, despite the fact that nature of work & working hours of the claimants and their counterparts who are regular employees and are paid salary in regular pay-scale, is same and identical. The workmen herein also fulfill the requisite qualifications. This clearly goes to show that the Management has deprived the workmen the status & privilege of permanent/regular employee, as the workmen/claimants working as Technical Supervisor and/or Technicians are getting lesser wages/salary than the wages/salary being paid to their regular counterparts. Employing workmen as "badlis", casuals or temporaries and to continue them as such for years together with the object of depriving them of the status & privileges of permanent workman **amounts to unfair labour practice in terms of Section 2(ra) read with Fifth Schedule of the Act.** It emerges that the Management has adopted unfair labour practice in depriving the workmen/claimants herein of the status & benefit of permanent workman and such a practice is required to be curbed. It is well settled in law that once the workmen/claimants are doing same duties and responsibilities as are being performed by regular employees of the Management, **they are entitled to get wages at par with those of regular employees, on the principle of "Equal Pay for Equal Work".**

25. Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Jagjit Singh and others, 2017Lab.L.C. 427** while upholding the principle of "equal pay for equal work" even for temporary employees observed as under :-

> "**The principle of "equal pay for equal work" can be extended to temporary employees (differently described as work-charged, daily wage, casual, adhoc, contractual and the like).** It is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, can not be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For

he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation. ''

26. In view of the rulings and facts of the case as discussed hereinabove, it is held that the claimant Lipika Sharma who was engaged and working as Technical Supervisor is entitled to get wages/salary in the pay-scale of Rs. Rs.9300-34800/- with grade pay of Rs.4600/- , whereas other claimants who were engaged and working as Technical are entitled to get wages/salary in the pay-scale of Rs.5200-20200 with grade pay of Rs.2000/-, alongwith all consequential benefits from the initial date of their appointment.

27. As regards regularization of services of the workmen/claimant, it has come on record that the workmen/claimants do fulfill the requisite qualifications and they were selected through due process and were appointed against vacant/sanctioned posts. The posts to which the claimants/workmen are working is of regular and perennial nature. As such, this Tribunal considers it expedient in the interest of justice to direct the Management to issue orders regarding regularization of the services of claimants/workmen against vacant/sanctioned posts of Technical Supervisor and Technicians respectively, within a period of three months from the date of publication of the Award.

Award is passed accordingly in favour of the claimants and against the Management.

Date : 2.9.2019

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1785.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स राष्ट्रीय संस्कृत संस्थान (मानित विश्वविद्यालय), त्रिवेणी नगर जयपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जयपुर के पंचाट (संदर्भ संख्या 76/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.09.2019 को प्राप्त हुए थे ।

[सं. एल-42012/108/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1785.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76 /2014) of the Central Government Industrial Tribunal-cum-Labour Court Jaipur as shown in the Annexure, in the Industrial dispute between the employers in relation to The Rashtriya Sanskrit institute, Jaipur, & Others, and their workmen which were received by the Central Government on 18.09.2019.

[No. L-42012/108/2014-IR (DU)]

V. K. THAKUR, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
सी.जी.आई.टी. प्रकरण सं. 76 / 2014

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. L-42012/108/2014–IR(DU) दिनांक 30/09/2014

दूलाराम सैनी पुत्र श्री गोविन्द राम माली,
निवासी– 26, मालियों की ढाणी,
ग्राम व पोस्ट मुहाना, तह. साँगानेर,
जिला– जयपुर।

बनाम

राष्ट्रीय संस्कृत संस्थान (मानित विश्वविद्यालय),
त्रिवेणी नगर, गोपाल पुरा बाईपास,
टोंक रोड, जयपुर।

प्रार्थी की तरफ से : श्री महेश कुमार शर्मा – प्रतिनिधि
अप्रार्थी की तरफ से : श्री बनवारी लाल ताखर – प्रतिनिधि

अधिनिर्णय

दिनांक : 08. 08. 2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 30.9.2014 को निम्नांकित विवाद, औद्योगिक विवाद अधिनियम 1947 (जिसे आगामी चरणों में अधिनियम कहा जावेगा) की धारा 10 (2 A) व 10 (1) (d) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को अधिनिर्णयन हेतु प्रेषित किया गया :–

> ''क्या प्रबंधन प्राचार्य, राष्ट्रीय संस्कृत संस्थान, जयपुर का कर्मकार श्री दूलाराम सैनी पुत्र श्री गोविन्द राम माली, डाटा एन्ट्री ऑपरेटर को मौखिक आदेश दिनांक 31.5.2003 के द्वारा नौकरी से निकाला जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो कर्मकार किस अनुतोष को पाने का अधिकारी हैं ?''

2. उपर्युक्त विवाद प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया तथा प्रार्थी को निर्देश दिया गया कि वह दावे का अभिकथन प्रस्तुत करें। दिनांक 15.12.2014 को प्रार्थी ने दावे का अभिकथन प्रस्तुत किया जिसके संक्षिप्त तथ्य इस प्रकार है। विपक्षी नियोजक द्वारा डाटा एन्ट्री ऑपरेटर के पद हेतु दिनांक 21.9.2012 को समाचार पत्र में विज्ञप्ति जारी की गई। प्रार्थी ने इस पद हेतु आवेदन किया। साक्षात्कार के उपरान्त प्रार्थी का चयन किया गया तथा आदेश दिनांक 26.9.2012 द्वारा प्रार्थी श्रमिक को 11 हजार रूपये मासिक पर संविदागत आधार पर डाटा एन्ट्री ऑपरेटर नियुक्त किया गया। प्रार्थी ने दिनांक 27.9.2012 को कार्य ग्रहण किया। प्रार्थी को ई.गृन्थालय परियोजना में नियुक्त किया गया। प्रार्थी की सेवायें दिनांक
15.1.2013 के आदेश से दिनांक 26.3.2013 तक बढ़ाई गई। तत्पश्चात दिनांक 13.5.2013 के आदेश से प्रार्थी की सेवायें दिनांक 31.5.2013 तक बढा दी गई। प्रार्थी ने दिनांक 27.9.2012 से दिनांक 31.5.2013 तक लगातार एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक कार्य किया है। परन्तु अप्रार्थी ने बिना कारण बताये और सुनवाई का अवसर दिये अधिनियम की धारा 25 (एफ), (जी) एवं (एच) के प्रावधानों की पालना किये बिना दिनांक 31.5.2013 को प्रार्थी को सेवामुक्त कर दिया जबकि विभाग में कार्य शेष था तथा अन्य कर्मचारियों की आवश्यकता पुस्तकालय अध्यक्ष ने व्यक्त की थी। प्रार्थी द्वारा किया गया कार्य निरन्तर प्रकृति का है। सेवामुक्ति से व्यथित होकर प्रार्थी ने दिनांक 4.7.2013 को अप्रार्थी से पुनः सेवा में लेने का निवेदन किय, किन्तु आश्वासन के अलावा कुछ नहीं मिला। अप्रार्थी ने प्रार्थी को सेवा पर लेने से पूर्व कान्ट्रेक्ट लेबर (रेगुलेशन एण्ड एबोलिशन) एक्ट की धारा 7 के अन्तर्गत पंजीकरण नहीं करवाया है। इसलिये प्रार्थी की सेवायें संविदागत नहीं कहीं जा सकती। प्रार्थी की सेवामुक्ति अधिनियम की धारा 25 (जी), (एफ) एवं (एच) के उल्लंघन में की गई है। सेवामुक्ति के उपरान्त से प्रार्थी बेरोजगार है अतः प्रार्थी को सेवा में निरन्तरता तथा विगत परिलाभों सहित सेवा में वापस लिया जावें।

3. अप्रार्थी ने दावे के प्रतिउत्तर में प्रार्थी के अभिवचनों को अस्वीकार किया। उनका कथन है कि प्रार्थी को संविदाजनित पद पर पुस्तकों की डाटा एन्ट्री ऑपरेटर के कार्य हेतु निश्चित समय के लिये लगाया गया था। प्रथम बार में कार्य पूर्ण न किये जाने पर नियोजन की अवधि समय–समय पर बढ़ाई। नियुक्ति पत्र में ही यह लिखा गया था कि नियमित नियुक्ति हेतु किसी भी प्रकार का दावा स्वीकार्य नही होगा। प्रार्थी ने भी इस शर्त को स्वीकार कर कार्य ग्रहण किया । प्रार्थी को यह भी सूचित कर दिया गया था कि सेवा बिना किसी पूर्व सूचना के समाप्त की जा सकेगी। प्रार्थी को जिस कार्य के लिये लगाया वह विशिष्ट कार्य था। वह निरन्तर प्रकृति का नहीं था। अप्रार्थी संस्थान पर अधिनियम के प्रावधान प्रभावी नहीं है। दिनांक 28.3.2013 से दिनांक 31.5.2013 तक 1272 शेष बची पुस्तकों की प्रविष्टि हेतु प्रार्थी का सेवाकाल बढाया गया। संविदाजनित नियुक्ति अवधि के समापन पर सेवा स्वतः ही समाप्त होती है। अतः दावा निरस्त किया जावें।

4. उभयपक्ष ने अपने अभिवचनों का शपथ–पत्र द्वारा समर्थन किया है।

5. प्रार्थी की और से विपक्षी के प्रतिउत्तर का अतिरिक्त कथन प्रस्तुत करते हुए तथ्यों का खण्डन किया गया और दावा स्वीकार करने का आग्रह भी किया गया।

6. प्रार्थी ने अपने साक्ष्य में स्वंय प्रार्थी दूलाराम सैनी को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श– डब्ल्यू 1 से डब्ल्यू 7 तक प्रलेख प्रदर्शित किये।

7. विपक्षी ने अपने साक्ष्य में लोकेश कुमार गुप्ता निजि सचिव को परीक्षित किया तथा प्रदर्श– एम 1 से एम 7 तक प्रलेख प्रदर्शित किये। उल्लेखनीय है कि प्रदर्श– डब्ल्यू 1 से डब्ल्यू 7 तक प्रलेखों में प्रदर्श डब्ल्यू 6 को छोडकर शेष प्रदर्श वहीं हैं, जो प्रार्थी ने प्रदर्शित किये तथा विपक्षी ने भी उन्हीं प्रलेखों को आधार बनाया है।

8. दिनांक 23 एवं 25.7.2013 को मैनें उभयपक्ष के तर्कों उपलब्ध साक्ष्य एवं प्रस्तुत किये गये न्यायिक दृष्टान्तों में पारित विधि पर मनन किया।

9. प्रार्थी प्रतिनिधि का यह तर्क है कि विपक्षी ने अपने संस्थान में डाटा एन्ट्री ऑपरेटर के कार्य हेतु प्रार्थी को नियुक्त किया। यह कार्य वर्षपर्यन्त चलने वाला स्थायी प्रकृति का कार्य है। किन्तु स्थायी नियुक्ति देने के बदले विपक्षी ने संविदागत नियुक्ति की आड़ में निश्चित समय (89 दिन) के लिये प्रार्थी को नियुक्त किया। तत्पश्चात चूंकि कार्य स्थायी प्रकृति का था, प्रार्थी की सेवायें दो बार और बढाई गई। विपक्षी का यह प्रयास रहा कि सेवासमाप्ति पर अधिनियम के प्रावधानों की पालना किये बिना सेवासमाप्ति की जा सकें। प्रार्थी को सेवामुक्त करने के उपरान्त भी अन्य व्यक्तियों को इसी कार्य हेतु संविदा पर सेवा में लिया गया है। प्रदर्श– डब्ल्यू 7 विज्ञापन द्वारा इस हेतु साक्षात्कार भी आयोजित किया गया है। इस प्रकार प्रार्थी ने लगातार विपक्षी के अधिन 240 दिन से अधीक सेवा की है। चूंकि उसे कोई नोटिस अथवा नोटिस वेतन ना ही छंटनी प्रतिकर दिया गया, इसलिये सेवासमाप्ति अवैध हैं। उन्होनें अपने तर्कों के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) डब्ल्यू.एल.सी. (राजस्थान) यू.सी. 2004, 260 अल्कोबैक्स मेटल्स लिमिटेड बनाम स्टेट ऑफ राजस्थान व अन्य

(2) डब्ल्यू.एल.सी. (राजस्थान) यू.सी. 2005, 737 डायरेक्टर दूरदर्शन केन्द्र बनाम जज, सेन्ट्रल इण्ड्स्ट्रियल ट्रिब्यूनल व अन्य

(3) डब्ल्यू.एल.सी. (राजस्थान) यू.सी. 2008, 730 राजस्थान स्टेट व अन्य बनाम गिर्राज प्रसाद व अन्य

10. विपक्षी प्रतिनिधि ने प्रार्थी पक्ष के तर्कों का खण्डन करते हुए यह कहा है कि प्रार्थी को सीमित कार्य के लिये निश्चित अवधि हेतु संविदागत नियुक्ति दी गई थी। उक्त कार्य के समाप्त हो जाने पर प्रार्थी को सेवा में रखा जाना सम्भव नहीं था। इसलिये संविदा की अवधि अभिवृद्ध नहीं की गई। डाटा एन्ट्री ऑपरेटर का कार्य स्थायी प्रकृति का नहीं है। जब भी पुस्तकें संस्थान के पुस्तकालय में प्राप्त होती हैं तो उनकी प्रविष्टि के लिये आवश्यकता अनुरूप समाचार पत्रों मे विज्ञापन देकर साक्षात्कार के लिये योग्य व्यक्तियों को बुलाया जाता है। दिनांक 13.5.2013 को 1272 पुस्तकों की एन्ट्री शेष रह गयी थी इस कारण प्रदर्श– एम 4 आदेश जारी कर दिनांक 31.5.2013 तक प्रार्थी का संविदाजनित नियोजन बढाया गया था। तत्पश्चात इस नियोजन को आगे न बढाते हुए समाप्त कर दिया। अधिकरण की धारा 2 (औ.औ.)(बी.बी.) के अन्तर्गत प्रार्थी की सेवासमाप्ति छंटनी नहीं कही जा सकती, इसलिये अधिनियम की धारा 25 (एफ), (जी) एवं (एच) के प्रावधानों का अनुपालन आवश्यक नहीं है।

11. उभयपक्ष के तर्कों के आधार पर इस विवाद में निम्न लिखित विचारणीय बिन्दु उत्पन्न हुए हैं :–

(1.) बिन्दु संख्या 1 :– क्या प्रार्थी को स्थायी प्रकृति के निरन्तर चलने वाले कार्य हेतु संविदागत नियुक्ति के छद्मावरण के अन्तर्गत नियुक्ति दी गई तथा प्रार्थी ने दिनांक 31.5.2013 तक विपक्षी के अधीन एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक की सेवा पूर्ण की है। इसलिये प्रार्थी की सेवासमाप्ति के पूर्व धारा 25 (एफ) अधिनियम के प्रावधानों का अनुपालन विपक्षी द्वारा किया जाना आवश्यक था ?

बिन्दु संख्या 2 :– क्या अप्रार्थी ने प्रार्थी की सेवासमाप्ति के पूर्व कनिष्टतम श्रमिक की छंटनी नहीं करते हुए प्रार्थी को सेवामुक्त किया तथा सेवासमाप्ति के उपरान्त भी अन्य व्यक्तियों को उसी कार्य हेतु नियोजित कर प्रार्थी को नियुक्ति हेतु वरीयता नहीं दी ?

बिन्दु संख्या 3 :– अनुतोष ?

12. प्रत्येक विचारणीय बिन्दु पर विवेचित निर्णय इस प्रकार है : –

<u>विचारणीय बिन्दु संख्या 1 :–</u>

इस बिन्दु के विनिश्चय हेतु सर्वप्रथम यह दृष्टव्य है कि क्या विपक्षी द्वारा प्रार्थी को जिस कार्य हेतु सेवा में नियोजित किया गया उसकी प्रकृति वस्तुतः स्थायी एवं सर्वकालिक है या तात्कालिक आवश्कतानुरूप? साक्ष्य का परिशीलन करने पर यह प्रकट होता है कि :–

(क). प्रार्थी की नियुक्ति प्रथम बार में प्रदर्श– डब्ल्यू 1 आदेश द्वारा 89 दिन के लिये 11 हजार रूपये मासिक पारिश्रमिक पर की गई।

(ख). प्रदर्श– डब्ल्यू 2 आदेश के पठन से यह स्पष्ट है कि प्रार्थी की नियुक्ति डाटा एन्ट्री ऑपरेटर के पद पर एक परियोजना के अन्तर्गत जिसे ''ई–गृन्थालय योजना'' नाम दिया गया था, में की गई थी। परियोजना शब्द से

तात्पर्य यह होता है कि एक विशिष्ट उद्देश्य की पूर्ति के लिये समयबद्ध रीति से किसी कार्य का सम्पादन किया जाना है। परियोजना के उद्देश्य की पूर्ति होने पर परियोजना का समापन हो सकता है अथवा निश्चित अवधि में उद्देश्य प्राप्ति न होने पर तथा उचित प्रतीत होने पर परियोजना की अवधि को बढाया भी जा सकता है।

(ग). इसी क्रम में प्रदर्श– डब्ल्यू 3 आदेश द्वारा प्रार्थी की सेवा अवधि दिनांक 26.3.2013 तक बिना कोई कारण दर्शाये अभिवृद्ध की गई।

(घ). प्रदर्श– डब्ल्यू 4 आदेश द्वारा प्रार्थी की सेवा अवधि दिनांक 31.5.2013 तक इस कारण बढाई गई है कि 1272 अवशिष्ट पुस्तकों की एन्ट्री का कार्य शेष रह गया था।

13. प्रार्थी ने अपने प्रार्थनापत्र प्रदर्श– डब्ल्यू 6 दिनांक 4.7.13 में यद्धपि यह लिखा है कि विपक्षी विभाग में डाटा एन्ट्री ऑपरेटर की आवश्यकता है तथा कार्य निरन्तर प्रकृति का है किन्तु प्रार्थी ने इस तथ्य का कोई प्रमाण प्रस्तुत नहीं किया है और न हीं विपक्षी साक्षी से की गई प्रतिपरीक्षा में इस तथ्य का सुझाव दिया गया है कि दिनांक 31.5.2013 के तुरन्त उपरान्त भी डाटा एन्ट्री ऑपरेटर का कार्य लगातार जारी रहा हो। प्रार्थी ने प्रदर्श– डब्ल्यू 7, विपक्षीगण द्वारा प्रदर्शित विज्ञापन साक्ष्य में प्रदर्शित अवश्य किया है किन्तु यह विज्ञापन वर्ष 2015–16 में दिनांक 6.11.2015 को साक्षात्कार हेतु अभ्यर्थियों को आहूत करने के उद्देश्य से जारी किया गया है। स्पष्ट है कि यह विज्ञापन प्रार्थी की सेवासमाप्ति के लगभग ढ़ाई वर्ष उपरान्त का है।

14. विपक्षी साक्षी श्री लोकेश गुप्ता का प्रतिपरीक्षा में यह कथन है कि जिस कार्य के लिये प्रार्थी को नियुक्त किया गया था वह 3 माह के अन्दर पूरा किया जाना अपेक्षित था, जो प्रार्थी द्वारा पूरा नही हो सका। इसलिये उसके कार्यकाल को विस्तारित भी किया गया। साक्षी का आगामी कथन है कि संविदा के आधार पर कार्य की समाप्ति के बाद मुख्यालय से अनुमोदन प्राप्त किये बिना नियुक्ति नहीं दी जा सकती..... जब प्रार्थी को हटाया गया उस समय वह पुस्तकालय में कार्यरत था। डाटा एन्ट्री ऑपरेटर के लिये हमारे यहां हमेशा आवश्यकता नहीं है जब बहुत सारी किताबें आ जाती हैं और एकत्र हो जाती हैं तो उस अल्प अवधि हेतु ही ऐसी नियुक्ति की आवश्यकता होती है तथा अल्प अवधि के लिये नियुक्ति हेतु विज्ञापन जारी होता है। इस साक्षी के कथन 6.12.17 को अभिलिखित हुए हैं। साक्षी स्वीकार करता है कि विगत महीने में भी विज्ञापन जारी हुआ था..... दिनांक 31.5.2013 के बाद संविदा पर नियुक्ति हुई है तथा कार्य समाप्ति के बाद फिर उन्हें हटा दिया गया है।

15. प्रार्थी प्रतिनिधि का यह तर्क है कि विपक्षी संस्थान द्वारा संविदा श्रम विनियमन एवं उन्मूलन अधिनियम 1970 (जिसे आगे अधिनियम 1970 कहा जायेगा) की धारा 7 के अन्तर्गत स्वंय का पंजीकरण नहीं कराया गया है, इसलिये विपक्षी को किसी कर्मचारी को संविदा पर रखने का विधिक अधिकार नहीं है। इस तर्क के सम्बन्ध में सुसंगत विधि का परिशीलन यह स्पष्ट करता है कि अधिनियम 1970 की धारा 1 (4) के अन्तर्गत इस अधिनियम के प्रावधानों का प्रयोजन उस संस्थापन या ठेकेदार पर होगा जिसमें 20 या अधिक कर्मकार संविदा श्रमिक के रूप में नियोजित हों। इस विवाद के तथ्यों के अनुसार उभयपक्ष की साक्ष्य से यह प्रमाणित नहीं हुआ है कि विपक्षी संस्थान में 20 या उससे अधिक कर्मकार संविदा श्रमिक के रूप में नियोजित रहें हैं। समुचित सरकार द्वारा विपक्षी संस्थान पर अधिनियम 1970 के प्रावधान प्रयोजित होने सम्बन्धित अधिसूचना भी जारी नहीं की गई है। इस स्थिति में विपक्षी संस्थान पर अधिनियम 1970 की धारा 7 के अन्तर्गत स्वंय को पंजीकृत करवाने की विधिक आवश्यकता उत्पन्न ही नहीं होती है।

16. माननीय राज. उच्च न्यायालय ने अपने निर्णय अल्कोबेक्स मेटल्स लि. बनाम स्टेट ऑफ राजस्थान में यह अधिमत व्यक्त किया है कि एक ऐसी नियुक्ति जो दृश्यमान रूप में विधि पूर्ण प्रकट होती हो, को भी इस आधार पर चुनौती दी जा सकती है कि प्राधिकार का प्रयोग तथ्यों एवं परिस्थितियों में अऋजुश्रम अभ्यास है, तथा उसकी पृष्ठभूमि में जाकर यह ज्ञात किया जा सकता है कि क्या निश्चित अवधि की नियुक्ति देने की ओट में निरन्तर एवं स्थायी प्रकृति का कार्य करवाया जा रहा है, जो अधिनियम के प्रावधानों के उद्देश्य के अन्तर्गत अऋजु श्रम अभ्यास है, तथा निवारण योग्य है। इस निर्णय में पारित विधि के प्रकाश में अधिकरण को यह शक्ति प्राप्त है कि वह निश्चित अवधि हेतु की गई संविदागत नियुक्ति की प्रकृति का परीक्षण कर सकें। परीक्षण हेतु, किये गये साक्ष्य का विवेचन यह प्रमाणित करता है कि प्रार्थी को ''ई–ग्रन्थालय'' नामक विशिष्ट परियोजना के अन्तर्गत विपक्षी के पुस्तकालय में प्राप्त होने वाली पुस्तकों को कम्प्यूटर पर प्रविष्ट करवाने के लिये तात्कालिक उद्देश्य से सीमित अवधि के कार्य हेतु संविदा पर वस्तुतः नियोजित किया गया था। साक्ष्य से यह प्रमाणित नहीं हुआ है कि डाटा एन्ट्री ऑपरेटर पद विपक्षी संस्थान में स्थायी रूप से सृजित है जिस पर निर्धारित चयन प्रक्रिया के अनुसार नियमित नियुक्ति दी जाती हो। यदि ऐसा होता तो विपक्षीगण द्वारा प्रदर्श– डब्ल्यू 7 विज्ञापन के माध्यम से डाटा एन्ट्री ऑपरेटर के पद पर संविदागत नियुक्ति हेतु साक्षात्कार का विज्ञापन प्रकाशन नहीं किया जाता और विहित चयन प्रक्रिया का पालन करते हुए स्थायी नियुक्ति हेतु आवेदन आमन्त्रित किये जाते।

17. इस प्रकार यह स्पष्ट है कि इस निर्णय के तथ्य हस्तागत विवाद के तथ्यों एवं परिस्थितियों से भिन्नता लिये हुये हैं इस स्थिति में प्रार्थी की संविदागत नियुक्ति, स्थायी कार्य की पूर्ति हेतु की गई छद्म नियुक्ति, प्रमाणित नहीं होती है। यह प्रमाणित

नही हुआ है कि विपक्षी द्वारा स्थायी एवं निरन्तर प्रकृति के कार्य के विरूद्ध संविदागत नियुक्ति के रूप में अऋजु श्रम अभ्यास किया गया हो।

18. अधिनियम की धारा 2 (औ.औ.) (बी.बी.) के अन्तर्गत नियोजक एवं कर्मकार के बीच हुई नियोजन संविदा के समाप्त हो जाने पर उसका नवीनीकरण ना किया जाना अथवा नियोजन संविदा में अन्तर्विष्टि किसी अनुबन्ध के अधीन ऐसी संविदा का पर्यावसान किये जाने के फलस्वरूप किसी कर्मकार की सेवा का पर्यावसान, छँटनी नहीं होता है।

19. चूंकि प्रार्थी व विपक्षी के मध्य ई– ग्रन्थालय परियोजना के अन्तर्गत निश्चित अवधि हेतु संविदागत नियुक्ति की गई थी, दिनांक 31.5.2013 के पश्चात उक्त संविदा का नवीनीकरण प्रार्थी के सेवा काल में अभिवृद्धि करते हुए इस कारण नहीं किया गया कि अवशिष्ट 1272 पुस्तकों की डाटा एन्ट्री का कार्य पूर्ण हो गया था। इस प्रकार विपक्षी को यह विधिक अधिकार प्राप्त हो गया था कि वह संविदा का पर्यावसान हो जाने के कारण अधिनियम की धारा 2 (औ.औ.) (बी.बी.) के प्रावधान के अनुसरण में प्रार्थी की सेवा का पर्यावसान कर सके। इस तथ्यात्मक परिदृश्य में अधिनियम की धारा 2 (औ.औ.) (बी.बी.) के प्रावधान प्रभावी हैं, और प्रार्थी की सेवासमाप्ति ''छंटनी'' होना प्रमाणित नहीं होती है।

20. प्रार्थी द्वारा विपक्षी के अधीन की गई सेवा अवधि में यद्धपि 2–2 दिन के अन्तराल देकर उसे खण्डित करने का प्रयास किया गया है किन्तु यह सेवा लगातार ही मानी जावेगी। क्योंकि दिनांक 31.5.2013 तक डाटा एन्ट्री का कार्य समाप्त नही हुआ था। इस प्रकार प्रार्थी दिनांक 27.9.2012 से 31.5.2013 तक एक केलेण्डर वर्ष की अवधि में 240 दिन से अधिक सेवा पूरी कर चुका था किन्तु चूंकि यह नियुक्ति एवं संविदाजनित दायित्व के अधीन थी इसलिये संविदा समापन पर की गई सेवासमाप्ति ''छंटनी'' नहीं है तथा विपक्षी पर अधिनियम की धारा 25 (एफ) के प्रावधानों के अनुपालन की बाध्यता आरोपित नहीं की जा सकती है। इस स्थिति में प्रार्थी द्वारा प्रस्तुत निर्णय स्टेट व अन्य बनाम गिरिराज प्रसाद व अन्य में माननीय राज. उच्च न्यायालय द्वारा पारित यह अधिमत कि अंशकालीन कर्मचारी भी धारा 25 (एफ) अधिनियम के प्रावधान का लाभ पाने के अधिकारी हैं, तथ्यात्मक भिन्नता के कारण प्रार्थी के पक्ष में नहीं है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

21. विचारणीय बिन्दु संख्या 2 :– प्रार्थी ने अपने साक्ष्य शपथ–पत्र में यह तो कहा है कि उससे कनिष्ठ श्रमिक अप्रार्थी के संस्थान में आज भी कार्यरत हैं तथा कार्य की आवश्यकता होने पर अन्य श्रमिकों के बजाय प्रार्थी को नियुक्ति हेतु वरीयता दी जानी चाहिये थी। किन्तु प्रार्थी ने अपनी साक्ष्य में उन व्यक्तियों के नाम तथा विवरण ही वर्णित नहीं किये है जिन्हें प्रार्थी की सेवासमाप्ति के उपरान्त डाटा एन्ट्री कार्य हेतु विपक्षी ने नियोजित किया। प्रार्थी ने दिनांक 6.11.2015 को हुए साक्षात्कार में प्रार्थी के उपस्थित होने तथा उसे अवसर न दिये जाने का भी कोई प्रलेखीय प्रमाण प्रस्तुत नहीं किया है। बिन्दु सं.1 प्रार्थी के विरूद्ध निर्णीत किया गया है तथा प्रार्थी की सेवा निश्चित अवधि हेतु संविदागत होना प्रमाणित हो चुका है। विपक्षी ने यद्धपि यह स्वीकार किया है कि प्रार्थी की सेवासमाप्ति तिथि (31.5.2013) के पश्चात आवश्यकता होने पर डाटा एन्ट्री का कार्य करवाया गया है। लेकिन यह कार्य भी संविदागत श्रमिक से ही करवाना कहा है। विपक्षी साक्षी को यह सुझाव नही दिया गया है कि प्रार्थी ने स्वंय को सेवा हेतु प्रस्तुत किया हो फिर भी उसे वरीयता नहीं दी गई हो। विपक्षी ने पुनः यह पुष्ट किया है कि वर्तमान में संस्थान में कोई संविदा श्रमिक कार्यरत नहीं है।

22. साक्ष्य की इस स्थति में चूंकि डाटा एन्ट्री ऑपरेटर का पद स्थायी एवं नियमित होना प्रमाणित नहीं हुआ है इसलिये इस पद हेतु कोई वरिष्ठता सुची का संधारण किया जाना अपेक्षित नहीं है। साक्ष्य से यह प्रमाणित नहीं होता है कि प्रार्थी से कनिष्ठतर किसी व्यक्ति को प्रार्थी की सेवासमाप्ति के तुरन्त उपरान्त प्रार्थी को वरीयता न देते हुए सेवा में लिया गया हों। माननीय राज. उच्च न्यायालय द्वारा अपने निर्णय डायरेक्टर दूरदर्शन केन्द्र बनाम जज सेन्ट्रल इण्डस्ट्रीयल ट्रिब्यूनल व अन्य में यह प्रतिपादित किया गया है कि जब कर्मकार से कनिष्ठ व्यक्तियों को सेवा में रखा गया हो तो ऐसे कर्मकार को विगत वेतन सहित सेवा में रखा जाना उचित है, हस्तगत विवाद से तथ्यात्मक भिन्नता के कारण प्रार्थी के पक्ष में सहायक नहीं है। इस विवेचन के उपरान्त विपक्षी द्वारा अधिनियम की धारा 25 (जी) एवं (एच) के प्रावधानों का उल्लंघन किया जाना प्रमाणित नहीं हुआ है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

अनुतोष ?

23. विचारणीय बिन्दु 1 व 2 का विनिश्चय प्रार्थी के विरूद्ध किया गया है। इस प्रकार दिनांक 31.5.2013 को प्रार्थी की सेवासमाप्ति विपक्षी द्वारा किया जाना अधिनियम की धारा 2 (औ.औ.) (बी.बी.) के प्रावधानों के अन्तर्गत ''छंटनी'' होना नहीं पाया गया है। इसलिये प्रार्थी की सेवासमाप्ति वैध एवं विधि सम्मत पायी गयी है। इस स्थिति में प्रार्थी विपक्षी से कोई अनुतोष पाने का अधिकारी प्रमाणित नहीं हुआ है। प्रार्थी द्वारा प्रस्तुत दावा अस्वीकार किये जाने योग्य है।

आदेश

24. अतः दिनांक 31.5.2013 को विपक्षी द्वारा की गई प्रार्थी की सेवासमाप्ति वैध एवं न्यायोचित है। प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

25. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1786.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 14/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/185/2013–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1786.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2014)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 24.09.2019.

[No. L-22012/185/2013–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/14/2014

General Secretary,
Joint Coal Mazdoor Sangh (AITUC),
Iklehra,
Chhindwara …Workman/Union

Versus

Chief General Manager,
Western Coalfield Limited,
Pench Area, PO Parasia,
Distt. Chhindwara …Management

AWARD

Passed on this 16th day of July 2019

1. As per letter dated 10-2-2014 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 hereinafter referred to by word 'Act' as per Notification No.L-22012/185/2013-IR(CM-II). The dispute under reference relates to:

> "**Whether the action of management of WCL, Pench Area in refusing to absorb workman Wali Mohd. Carpenter, Token No. 3315 on the post of loading clerk/ Way Bridge Personnel is proper and legal? If not to what relief the workman concerned is entitled to?"**

2. After registering reference, notices were issued to the parties. Workman/Union filed statement of claim on behalf of workman that the allegation that the workman Wali Mohd. was first appointed as carpenter with the management. he was later shifted since last 4 years on the post of loading clerk under orders of management dated 21-10-2013. An authorization letter dated 15-12-2011 was issued by management in this respect. The management has refused to absorb him on the post of loading clerk inspite of the fact that he has been engaged for his job since last 4 years. A dispute was raised which could not be resolved by way of conciliation hence a reference has been made by Appropriate Authority before the Court. Workman/ Union has sought the relief of absorption of workman Wali Mohd on the post of loading clerk/ Way Bridge Personnel.

3. According to the Written Statement of defense filed by management, it was pleaded that the workman was appointed as carpenter in the year 1996 which comes under time rated category work . Their promotion is governed by cadre scheme for carpenter according to NCWA and on the basis of sanctioned manpower budget for the concerned unit. There is no designation or cadre scheme for way Bridge Personnel in NCWA. No authorization in writing was ever issued to the workman to work as loading and Way Bridge Personnel authorization submitted by the workman is a fake document. Since there is no work of carpenter hence the workman was engaged in the job of Way Bridge Personnel for his gainful utilization. Carrier growth of loading personnel is covered by cadre scheme for ministerial staff (loading Personnel as per NCWA) according to which a personnel should have passed matriculation for the post of Assistant Loading Clerk and 3 years of experience as Asstt. Loading Clerk in Clerical Grade III for being posted in Clerk Grade II as loading clerk. Since the workman is not matriculate hence is not qualified to be selected for the post of Assistant Loading Clerk. Accordingly it has been prayed that the reference be answered against the workman.

4. In the rejoinder, workman has mainly reiterated his allegation in statement of claim denying the pleadings in Written Statement of defence.

5. In evidence, workman has examined himself on oath and has proved Exhibit W-1, copy of letter dated 21-10-2003 issued by management, form of appointment of competent persons/ authorization letter Exhibit W-2, 2 orders dated 25-2-12- Exhibit W-3 & W-4.

6. Management has examined its witness Vilas Ramdas Karare. No document has been proved by management.

7. I have heard argument of Shri Mahendra Chatterjee representative of workman/Union on behalf of workman and Nirok Sardar representative of management. both have filed written argument also. I have perused the written argument also as well.

8. The reference is the sole point for determination in the case in hand.

9. Admitted between the parties is the fact that workman was first appointed as carpenter. Also not disputed is the fact that workman is a non-matriculate. The parties further admit that the work in the way bridge is being taken from the workman at present. Parties differ only on the point that according to management, it has been done so for gainful utilization of services of workman who is a carpenter because there is no work left for carpenters with the management whereas according to the workman, he has been issued authorization to work as loading clerk/ Way Bridge Personnel. Workman has filed and proved photocopy of authorization letter Exhibit W-2 by secondary evidence. Management's witness has specifically denied this authorization letter with the statement that it is not genuine. It does not bear the name of colliery from where it is issued. It does not have the book number or authorization number whereas every authorization that is issued must bear the book number and authorization number. This statement of the management's witness in his affidavit filed as examination in chief, has not been cross examined hence it shall be deemed to be admitted by workman side. **Now the question arises whether the workman is entitled to be absorbed as loading clerk/ Way Bridge Personnel on the ground that he is working in such a capacity**.

10. NCWA-III dated 25-9-84 has been referred to from the side of management. in this agreement, carpenter and loading personnel both are separate cadres. Both have separate qualifications for their appointment. First qualification for appointment as Assistant Loading Clerk which is the first position in this cadre is matriculation. No rule or circular has

been shown or referred to form the side of workman which provides change of cadre from carpenter to loading clerk. Furthermore, the management witness has specifically stated that workman is not a matriculate hence he does not possess the minimum qualification to be appointed as Assistant Loading Clerk/ Way Bridge Personnel. This statement has been controverted by workman either by cross examination of management witness or by any other means hence it is proved that the workman does not possess the minimum qualification to be appointed in loading cadre as Asstt. Loading Clerk. In absence of minimum qualification and any rule/ circular providing change of cadre, the action of management in not absorbing the workman in loading cadre as loading clerk cannot be faulted on law or facts. **Hence holding the action of management in refusing to absorb workman Wali Mohd. Carpenter, Token No. 3315 on the post of loading clerk/ Way Bridge Personnel is held justified and workman is held entitled to no relief**.

11. In the result, award is passed as under;-

(1) The action of management in refusing to absorb workman Wali Mohd. Carpenter, Token No. 3315 on the post of loading clerk/ Way Bridge Personnel is proper and legal.

(2) Workman Shri Wali Mohd is not entitled to any relief.

Dated:16.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1787.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 21/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/38/2010–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1787.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2011)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 24.09.2019.

[No. L-22012/38/2010–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/21/2011

Shri Bharat Singh,
General Secretary,
Sanyukta Koyla Mazdoor Sangh (AITUC),
Eklehra,
Chhindwara …Workman/Union

Versus

Chief Manager,
WCL, Pench Area,
Chhindwara …Management

AWARD

Passed on this 17th day of July 2019

1. As per letter dated 28-3-2011 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947,hereinafter referred to by word 'Act', as per Notification No.L-22012/38/2010-IR(CM-II). The dispute under reference relates to:

"क्या प्रबंधन द्वारा स्वर्गीय कामगार तेजीलाल उइके के आश्रित पुत्र श्री दिनेश अथवा गणेश का नाम सेवा अभिलेख में दर्ज न होने के आधार पर अनुकम्पा नियुक्ति प्रदान न किया जाना उचित है? यदि नहीं, तो स्वर्गीय कामगार के आश्रित पुत्र क्या अनुतोष पाने के अधिकारी हैं?"

2. Notices were issued to the parties. Workman side filed its statement of claim wherein it was stated that late Tejilal was an employee working under the management who died on 10-1-98. His eldest son Rajesh applied with documents for compassionate appointment vide letter of management WCL/Pench/Roz/67/89/2874/2000 dated 26-8-2000. He was informed that he was not fit medically for the job. The dependents were also informed that they were at liberty to seek compassionate appointment of another son, if available, on compassionate ground. It is the case of workman that 2nd son Dinesh had moved an application for compassionate appointment in the aforesaid letter of management on which it was informed by management vide letter No.WCL/I/R/MP/23/223/185 dt. 23-24.2007 that name of Dinesh as 2nd son of deceased workman is no where mentioned in the official records of the deceased workman hence he cannot be given compassionate appointment. Union raised this matter with the management which was discussed in the agenda and management agreed to make enquiries in this respect and decide the claim but till date, no appointment on compassionate ground has been offered to Dinesh, 2nd son of deceased workman. A dispute was raised before the Assistant Labor Commissioner and after failure of conciliation, the reference was made by appropriate Government to dispute.

3. Management has admitted that Shri Tejilal was under its employment who died on 22-1-98. It is also admitted that there is provision of compassionate appointment of dependent son/ unmarried dependent daughter or other persons as named in the NCWA-II for compassionate appointment on the terms and conditions mentioned in NCWA-II which was carried out in NCWA-III, IV & V. In NCWA-VI, conditions as mentioned in Para-4 of the Written Statement of defense have been added which are as follows:-

"9.3.0, 9.4.0 and 9.5.0 Provision of employment/ payment of monthly monetary compensation to dependent:-

i. **The clauses 9.3.0, 9.4.0 & 9.5.0 of NCWA-VI will be operative in NCWA_IC till a revised scheme is jointly prepared keeping in view the various verdict of Hon'ble Supreme Court at the earliest.**

ii. A sub committee of JBCCI will formulate a scheme keeping in view various directives of Supreme Court on the subject within three months of signing of the agreement,

iii. Meanwhile provision of employment as mentioned at (i) above shall be on basic wage of Cat-I as trainee for a period of 6 months. During the training period, they will have the status of permanent employee. however those dependents in possession of technical/ professional qualification in BE/Diploma will be considered for appointment in higher category keeping in view their qualification, suitability and vacancy.

iv. The monthly monetary compensation payable to the female dependent in case of death either in mine accident or for other reasons or medical unfitness of the employee shall be @Rs.6000/- w.e.f. 1-5-08.

v. In case of death either in mine accident or due to other reasons or medical unfitness, if no employment has been offered on the male dependent of the concerned worker is 12 years and above in age, he will be kept on a live roaster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependent is on live roaster, the female dependent will be paid monetary compensation as given in (iv) above.

9.6.0 Gratuity

9.6.1 The maximum ceiling of gratuity is Rs.10 Lakhs. That the relevant provision of the said NCWA is Annexure M-1."

4. Management also admits that Shri Rajesh Kumar, S/o deceased workman had submitted his application for compassionate appointment. His case was considered but he was not found medically fit for employment hence his application was rejected and it was intimated to him. According to management, the deceased workman had no where mentioned at any stage of his employment, in his service record that he had other son named Dinesh. Hence his claim was not considered for compassionate appointment and he was informed accordingly by management.

5. At stage of evidence, workman side filed letter of management dated 26-8-00 Exhibit W-1 minutes of the company level IR meeting with representative of Union on 7-3-07, 11-3-08 & 23-11-07 which are Exhibit W-2,3 & 4 respectively. These documents have been admitted by management. None was examined on oath from the side of workman.

6. Management has filed document Exhibit M-1 which is rules regarding provision of employment/ payment of monthly monetary compensation to the dependent in case of death of worker as per NCWA-VI, letter of management dated 26-8-2000. Family details as maintained by the management filed by workman during his time. Details of nominee declared by workman and filed by him with management, letter of management dated 23-24/1/2007 refusing appointment to the applicant workman Dinesh and reply of management filed before ALC during conciliation proceedings (all photocopies admitted by workman) hence marked Exhibit M-1 to M-6 respectively.

7. I have heard argument of Shri Mahendra Chatterjee Union Representative and Advocate A.K.Shashi for management. I have perused the record as well.

8. The reference is the point for determination in the present case.

9. According to case of workman, applicant workman is the 2nd son of the deceased workman. No document in form of family register, educational qualification documents have been filed to substantiate this claim. Workman has not even cared to examine himself on oath as witness. The burden to prove that he is the son of deceased workman is on the applicant workman in which he has miserably failed hence holding that the claim of the applicant workman being son of deceased workman Tejilal is not proved. The action of management in refusing compassionate appointment to the applicant workman is justified in law and on fact. Accordingly the applicant workman is held entitled to no reliefs.

10. In the result, award is passed as under:-

(1) The action of the management in not providing compassionate appointment to either Shri Dinesh or Shri Ganesh S/o Late Tejilal is proper and legal.

(2) Applicant workman is not entitled to any relief.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1788.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 33/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/19/2010–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1788.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2010)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 24.09.2019.

[No. L-22012/19/2010–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/33/2010

General Secretary,
SanyuktaKoyala Mazdoor Sangh (AITUC),
CRO Camp Iklehra,
Chhindwara. … Workman/Union

Versus

Chief General Manager,
WCL, Kanhan Area,
PO Dungaria,
Chhindwara (MP) …Management

AWARD

Passed on this 5th day of July 2019

1. As per letter dated 27-4-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/19/2010-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of M/S WCL in dismissing Shri Sanju Ragade w.e.f. 10-8-07 is legal and justified? To what relief is the claimant entitled for?"

2. After receiving reference, notices were issued to the parties. Workman/ Union alleged in his statement of claim that the present workman Sanju Ragde was residing in Chhindwara TRC and was appointed in Tandsi Project in Kanhan Area, 110 kms away from his place of residence. He had made a representation before the Mines Management, Sub Area and General Manager, Kanhan Area through proper channel for nearly posting in Nehariya Mines within Pench Area. In the meanwhile chargesheet dated 30-12-05 was issued to him which was never received by him. The domestic enquiry conducted was against the principal of law without giving the workman opportunity to defend and he was terminated on the basis of the enquiry conducted against settled principles of law. Accordingly the workman Union prayed for reinstatement of the workman along with backwages and benefits setting aside his dismissal.

3. In the Written Statement of defence filed by management, it has been pleaded that the workman Sanju Ragde absented himself unauthorisedly without intimation, permission or sanctioned leave from duty. A complaint was received in this respect on 25-8-05 hence a chargesheet No. 1378-A dated 30-12-05 was issued against him and was sent to him vide registered post. No satisfactory reply was received from workman hence DE was instituted. Shri Manoj Kumar Mines safety Officer was appointed enquiry Officer and Shri Gulab Nagle was appointed management representative vide order dated January 2008. The said order and chargesheet were sent to the workman by registered post. 4 sittings were done by the Enquiry Officer. Workman never appeared in the enquiry inspite of knowledge and receipt of notices hence the enquiry was conducted exparte and report dated 20-7-07 was submitted by the Enquiry officer holding the workman guilty of willful unauthorized absence without intimation, permission or sanctioned leave. The enquiry was conducted as per rules. Punishment was adequate to the charge hence no inference is warranted as pleaded by management.

4. Following issues were framed by my learned predecessor vide his order dated 14-5-2013 on the basis of pleadings. Issue No.1 was taken as preliminary issue. Workmen side absented itself since dates hence closing workman side evidence, evidence of management witness was recorded who proved the enquiry documents Exhibit M-1. None was present to cross-examine management's witness hence closing the opportunity of cross examination, management evidence was closed. Vide order dated 22-11-2016, passed by my learned predecessor, the DE was held legal and proper holding the preliminary issue No.1 in favour of management.

5. Thereafter again parties were given opportunity of evidence w.r.t. other issues. No evidence was adduced by any of the parties. Workman side remained absent hence argument of Mr. A.K.Shashi counsel for management were heard. Inspite of opportunity given , workman side did not filed any written argument. I have gone through the records.

6. Issue No.2 – As mentioned the charge against the workman was that he willfully and unauthorisedly absented himself from duty since 25-8-05. The enquiry papers proved from side of management show that there is sufficient material to hold the charge of unauthorized willful absence proved. Hence there is no occasion to disagree with the findings of Enquiry Officer and holding the charge of misconduct as alleged proved in the enquiry. Issue No.2 is decided against the workman.

7. Issue no.3- It has been held proved that since 20-6-05 i.e. date of his appointment, workman worked only upto 25-8-2005 and absented himself thereafter. According to the standing orders, para 26.30 referred to from the side of management long unauthorized willful absence is misconduct for which punishment of dismissal can be passed. Hence keeping in view the facts above mentioned proved, the punishment of dismissal for the charges cannot be held shockingly dis-appropriate. Hence holding the punishment appropriate to the charge, Issue No.3 is answered against workman.

8. Issue No.4- In the light of findings recorded above, workman is held entitled to no relief.

9. In the result, award is passed as under:-

(1) The action of the management of M/S. WCL in dismissing Shri Sanju Ragade w.e.f. 10-8-07 is legal and proper.

(2) Workman is not entitled to any relief.

Dated: 5.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1789.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 55/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–22012 / 182 / 2011–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1789.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2012)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 24.09.2019.

[No. L-22012/182/2011–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/55/2012

Shri Bharat Singh,
General Secretary,
Sanyukta Koyla Mazdoor Sangh (AITUC),
Eklehra, Chhindwara …Workman/Union

Versus

Chief Manager,
WCL Pench Area,
Parasia, Chhindwara …Management

AWARD

Passed on this 8th day of July 2019

1. As per letter dated 20-4-2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/182/2011-IR(CM-II). The dispute under reference relates to:

> "क्या महाप्रबंधक वे.को.लि. पेंच क्षेत्र परसिया द्वारा कर्मकार श्री सतनाम सिंह गौहर की पदोनात्ति एक्सरे तकनीशियन ग्रेड ए में करके फिटमेंट का लाभ नहीं दिया जाना न्यायोचित है? यदि नहीं तो कर्मकार क्या अनुतोष पाने का अधिकारी पाने का अधिकारी है?"

2. Workman filed photocopy of documents admitted by management marked Exhibit W-1 to W-3 respectively and has filed his affidavit in evidence and fixed for cross-examining affidavit in evidence. Learned counsel for management has filed an application of workman addressed to the management on 7-7-2019 alongwith office order dated 31-3-2017 promoting the workman for the post of X-Ray Technician Grade "C". The joining report of the workman dated 3-4-2017 and amended order dated 17-1-2007, copy served on Union Representative Shri Mahendra Chatterjee

3. It is evident and admitted from the side of workman that the dispute referred has been resolved by management and workman have been promoted as desired by him. Hence the dispute no where remains. Accordingly no dispute award is passed as the dispute has been subsided between the parties out of court by granting the relief by management as prayed by workman.

Dated:8.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1790.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 77/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/6/2006–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1790.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 24.09.2019.

[No. L-22012/6/2006–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/77/2006

General Secretary,
Samyukta Koyla Mazdoor Sangh (AITUC),
Central Office, Iklehra,
Pench Kanhan Area,
Chhindwara …Workman/Union

Versus

General Manager,
Western Coalfields Limited,
Pench Area,
PO Parasia,
Chhindwara …Management

AWARD

Passed on this 16th day of July 2019

1. As per letter dated 20-11-2006 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of Industrial Disputes Act, 1947 as per Notification No.L-22012/6/2006-IR(CM-II). The dispute under reference relates to:

> **"Whether the action of the management of Western Coalfields Limited in dismissing Shri Abdul Rauf w.e.f. 8-4-2005 as a result of disciplinary proceedings for remaining on unauthorized absence is legal and justified? If not, to what relief is the workman entitled?"**

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim. According to statement of claim, the applicant workman was employed with the management. he was served with a charge sheet which was a bundle of lies on 27-8-03 by management. he had filed a reply to the charge sheet. He could not be on duty on time to time due to his ill health which was duly informed to management time to time. He had filed applications to management in this respect on different dates.

3. Workman did participate in the Enquiry Proceedings for some time when he regained health. In spite of this, he was illegally terminated which is against law. Workman has sought relief of his reinstatement with back wages and benefits setting aside his dismissal.

4. In its Written Statement of defense, management has pleaded that the workman was working as Mining Sardar. He was habitual absentee. He was given ample opportunity to improve his attendance but without fail. The particulars of his attendance for the period from 2000 to 2004 is as follows:-

2000 - 167

2001 - 149

2002 - 09

2003 - 26

2004 - Jan to July- NIL

Hence he was issued a charge sheet for remaining unauthorizedly absent from duty from 1-4-03 till date without intimation, permission or sanction leave and also for habitual absenteeism. He did not file any reply hence Shri V.K.Nigam Sr.Engineer was appointed Enquiry Officer and Shri A.B.Nayak Survey Officer was appointed Presenting Officer vide order No. 1063 dated 29-8-03.

5. Ist date of sitting of enquiry was fixed on 26-9-03 and this was informed to the workman by Registered AD post which was received by him but he was not present. Further dates 10-3-04, 17-3-04, 27-8-04 & 10-9-04 were fixed in the enquiry and information by way of registered post was given to him which was received by workman. Workman appeared only on 10-9-04 and 22-9-04. Next date 12-10-04 was fixed on 22-9-04 which was personally noted by workman but he absented himself during the enquiry. Hence Presenting Officer produced evidence and enquiry was concluded. The Enquiry Officer submitted his Enquiry Report holding workman guilty of charge of habitual unauthorized absence. Enquiry papers were produced before the competent authority who agreed with the findings and issued a show cause notice No. 1504 on 14-10-04 which was sent to the workman by registered post and was received by him. He did file his representation. After considering the representation, the Disciplinary Authority passed the impugned order of dismissal. Also it was pleaded that the reasons of absence given by workman in his statement of claim are false. He did not avail medical facilities provided by management in its hospitals. As per standing orders, the workman has to apply for leave along with medical certificate in case of sickness. In the instant case, workman neither reported sick to Medical Officer nor availed any treatment form management hospital nor did he intimate about his sickness and even he did not apply for leave. He did not produce any document regarding his sickness and treatment before the management at any point of time.

6. Following issues were framed by my learned predecessor vide his order dated 16-6-2014-

(1) Whether the enquiry conducted against workman is proper and legal?

(2) Whether charges alleged against workman are proved from evidence in enquiry proceedings?

(3) Whether punishment of dismissal imposed on workman is is proper and legal?

(4) **What relief, the workman is entitled to?**

7. Issue No.1 has been decided by my learned predecessor on the basis of evidence on record against the workman vide order dated 24-7-2017. This order is part of award. My learned predecessor held enquiry legal and proper. Parties were given another chance to produce evidence on remaining issues. No evidence was produced by any of the parties. Hence I have heard argument of Shri Mahendra Chatterjee Union office bearer appearing as representative of workman and Shri A.K. Shashi for management. I have gone through the record.

8. **Issue No. 2**-

Management has examined Shri A.K.Nayak, Manager Survey, Presenting Officer and Hirok Sarkar Sr. Manager Personnel on oath and has proved the enquiry documents which is marked Exhibit M-1 to M-9.

9. Management witness Shri A.B.Nayak has not been cross examined by workman hence the statement is uncontroverted. Perusal of enquiry papers as proved by management witness show that from the statement on oath of enquiry witness Shri Namak wherein he stated about details of absence of workman in his statement before Enquiry Officer and also stated that the workman never informed the management regarding his absence. He never produced any sickness certificate or any application for leave**. It establishes clearly that charge of unauthorized habitual absence is proved from enquiry papers. Holding accordingly, Issue No. 2 is answered against workman.**

10. **Issue No. 3**-

The charge of unauthorized habitual absence is a misconduct for which punishment of dismissal is provided in NCWA hence keeping in view such type of habitual unauthorized absence as mentioned above proved in the enquiry report, punishment of dismissal cannot be said to be shockingly disappropriate to warrant interference by this Court. **Hence holding the punishment of dismissal appropriate, this issue is answered against workman.**

11. **Issue No**. 4-

On the basis of finding recorded above, workman is held entitled to no relief.

12. In the result, award is passed as under:**–**

(1) The action of the management of Western Coalfields Limited in dismissing Shri Abdul Rauf w.e.f. 8-4-2005 is proper and legal.

(2) Workman is not entitled to any relief.

Dated:16.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1791.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केंद्रीय टसर अनुसंधान प्रशिक्षण संस्थान, केंद्रीय रेशम बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 113/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–42012/273/2003–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1791.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2004) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of Central Tasar Research Training Institute, Central Silk Board, and their workmen, received by the Central Government on 24.09.2019.

[No. L-42012/273/2003–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/113/2004

Shri Sawandas, S/o Shri Samarudas,
Village Bishanpur, PO Darribhoda,
Via Katghora, Distt. Korna (CG) …Workman

Versus

Member Secretary,
Central Silk Board,
Ministry of Textile, Govt. of India,
CSB Complex, BTM Lay Out, Medivala,
Bangalore.

Dy. Director,
Central Silk Board,
Ministry of Textile,
Village & PO Piska Naghadi, Ranchi, Jharkhand

Assistant Director,
Central Tasar Research Training Institute
Extension centre, Central Silk Board,
Katghora, Distt. Korba (CG) …Management

AWARD

Passed on this 16th day of July 2019

1. As per letter dated 8-11-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/273/2003-IR(CM-II) The dispute under reference relates to:

> "Whether the action of the management of Central Tasar Research and Training Institute (under Silk Board) in terminating the services of Shri Sawandas, S/o Shri Samarudas and regularizing the services of his juniors overlooking his seniority is legal and justified? If not, to what relief the workman is entitled to?"

2. After registering case on the basis of reference, notices were sent to parties. In his Written Statement of claim, workman alleged that he was working in Rampur farm under the management Central Silk Board under NA/OP No.3 since 1983, OP No.3 is under direct control of OP NO.1 & 2 and on their instructions, he was engaged by OP No.3 for working for so many years. Every year, the management collected EPF subscriptions from the wages regularly till 2001 but never supplied EPF slips except a few slips that too reluctantly. Being in service of the management since 1983 till 2001, the workman claimed regularization but terminated the services of the applicant workman orally under the oral order. the workman raised a reference before ALC(C) Bilaspur on 16-1-2003. After FOC, reference was made by Appropriate Authority to this court. According to the workman, he worked for a period of more than 240 days in continuous employment of the management even in the year preceding his date of termination. No enquiry was held by management before his disengagement. He was not given any notice or compensation before his disengagement hence his disengagement is against law. Workman is unemployed since then. Accordingly workman has prayed for his reinstatement with all backwages and benefits as well as regularisation setting aside his termination.

3. The case of the management as taken in their joint written statement of defence is that in view of the activities carried out by the management, it is not an industry as defined under Section 2(j) of the Act. hence the reference is not maintainable as such before this Tribunal. Basic Seed Multiplication and Training Centres (BSM & TC), set up by management conduct rearing and seed preparation activities. Such seasonal activities generally run for 45-50 days in one spell and whole of the year it extends upto more than 150 or 180 days in 3 spells in any year. For this seasonal work, the basic seed multiplication and training centres (BSM & TC) engaged seasonal workers on rotation basis on the basis of availability. They are discontinued from work after the season is over. These workers are neither terminated nor retrenched but are kept on panel and are called for work during seasons for limited period according to requirement. The workman was never appointed against the post but only was engaged to do seasonal work as mentioned above. Hence his termination is not bad in law as his case falls under Section 2(oo)(bb) of the Act. also it has been pleaded that in the light of decision of Supreme Court in the State of MP and others versus Lalit Kumar Verma 2007(1)SCC 575 & State of Karnataka Vs Umadevi 2006(4)SCC-1. Accordingly it has been prayed that the reference be answered against the workman.

4. In his rejoinder, the workman has mainly denied the case of management in its Written Statement of defence and has alleged that the management is an industry as defined under Section 2(j) of the Act. the disengagement of workman is violative of Section 25-F of the Act hence illegal and arbitrary.

5. At the stage of evidence, workman Shri Samaru Das examined himself as witness. He was cross-examined by management.

6. On his application, the workman Samaru Das was re-examined and further cross-examined. Workman has proved documents application to ALC dated 16-1-2003. Notice of management dated 15-6-99 informing the workman to report on work place within 15 days for work. Memorandum dated 19-1-87 showing that the workman was relieved on 15-11-83 after completion of 2 months training under Farmers Stipendiary Training in Tasar Culture, 5 different EPF Contribution slips, letter of management dated 25-2-03 sent to ALC(C), Bilaspur during conciliation proceedings. Statement prepared by management regarding the work done by the present workman along with other workman within the period 4-1-84 to 4-1-90. Letter of management Director of the institute dated 10-9-96, list of employees dated 10-9-98, internal communication sent by Assistant Director of Institute showing that the applicant workman has worked within the period 1-2-85 to 28-2-93 but has not completed 240 days in any year. Representation dated 7-3-93 and other different document (all photocopy) which are exhibit W-1 to W-12.

7. These documents have been proved by secondary evidence under the order of my learned predecessor dated 17-10-16. Management has filed affidavit of its witness but did not produce him for cross examination on various dates granted for this. hence closing the evidence of management, argument from both the sides were heard and records have been perused by me.

8. From perusal of record in the light of rival argument, following points come up for determination in this case:–

(1) Whether the OP management is industry as defined in Section 2(j) of the Industrial Dispute Act?

(2) Whether the action of the management in terminating the services of applicant workman and regularizing the services of his juniors overlooking his seniority is justified in law and fact.

(3) Whether the workman is entitled to any relief or not?

9. **Point No.1**-

Before entering into merits on this point, Industry is defined under Section 2(j) of the Act is being reproduced as follows:–

"INDUSTRY" MEANS ANY BUSINESS, TRADE, UNDERTAKING, MANUFACTURE OR CALLING OF EMPLOYERS AND INCLUDES ANY CALLING, SERVICE, EMPLOYMENT, HANDICRAFT, OR INDUSTRIAL OCCUPATION OR AVOCATION OF WORKMEN.

10. Though the learned counsel for management has submitted that the management is not an industry as defined in the Act but I am not inclined to accept his argument on the ground that firstly the activities of the institute are integrated and it doesnot come under the exemptions to Section 2(j). In the light of principle of laid down above by the constitution bench of Supreme Court in Bangalore Water Works Vrs A.Rajappa Case- 1978 AIR 548, 1978 SCR (3) 207. OP No.3 is held industry in the Act. Point No.1 is answered accordingly.

11. **Point No.2-** Before entering into any discussion on merits on this point, some legal provisions are being reproduced.

Section 2(oo)

"**Retrenchment**" means the termination by the employer of the service of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

Section 2 (bb)–

termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health;

Section 25 B:–

Definition of continuous service.- For the purposes of this Chapter,-- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

25F. Conditions precedent to retrenchment of workmen.–No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2[for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government 3[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

25G. Procedure for retrenchment.–Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.

25H. Re-employment of retrenched workmen.–Where any workmen are retrenched and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 2[to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen] who offer themselves for re-employment shall have preference over other persons

Thus as it is evident from the legal provisions referred to above, workman will have to prove that he was engaged by management and was in continuous employment for a period of 240 days or more in the year preceding the date of his termination.

12. Learned counsel for management has submitted that the reference is vague in itself as it doesnot mention the date of termination of workman. True it is that date of termination of workman is not mentioned in the reference resulting into complications in deciding the factum of continuous employment in the year preceding the date of termination of workman but as the case is pending since 2004 and this point has been raised at this stage, justice requires that help of pleadings be sought on this point because it is not justice to punish the workman for a fault which he has not committed. According to the workman, he was terminated in the year 2001 as is stated in his statement of claim in Para-2. He also doesnot disclosed the date of his termination in his pleadings. The case of management is that workman was simply engaged for short period due to contingency of work on casual basis, hence there was no question of his termination.

13. In his affidavit on oath, workman has stated that he was first engaged on 1-2-1985 and remained in continuous employment till 15-7-99. He was terminated on 16-7-99. Exhibits W-1 to W-12 which are proved by secondary evidence under order of my learned predecessor dated 17-10-96, learned counsel for management has taken exception to it and has submitted that these documents cannot be said to be legally proved hence cannot be read into evidence. He has referred to Section 65 of Indian Evidence Act in this respect and has submitted that conditions enumerated under Section 65 have not been fulfilled by workman hence these documents cannot be said to be proved in law by secondary evidence.

14. Learned counsel has referred to case J.Yashoda Vs. K.Sobharani 2007(5)SCC-730, Kamla Devi Vs Vandana 2016(2)MPLJ-324. On this point wherein it has been held that for adducing secondary evidence, it is necessary for the party to prove existence and execution of original documents and conditions laid down in Section 65 must be fulfilled before secondary evidence can be admitted. Learned counsel for workman has submitted that the workman proved these photocopy documents under order of the Court dated 17-10-2016.

15. The settled principle of law is that strict rules of proof donot apply in cases/ proceedings under Industrial Dispute Act and Industrial Dispute (Central Rules) 1957 apply to the proceedings before Industrial Tribunals and Labour Courts. The cases referred to by learned counsel for management are not concerned with industrial adjudication. Inspite of the fact that it is undisputed that the procedure regarding conducting of case and recording evidence as well as proof must conform to basic principles of natural justice and evidence as well as proof accepted universally. It is true that in the case in hand, there is nothing on record to show that the primary evidence was not available and the permission to prove by way of secondary evidence was granted by my learned predecessor only on the ground that strict rules of proof donot apply in such cases. But even if these records are perused keeping in view the fact that the fact in issue is whether the workman had completed 240 days in continuous employment of the management in the year preceding the date of his termination. These documents in all show that the workman had worked upto 1992-93 for which number of days in every year have been mentioned in the documents particularly Exhibit W-7, W-8, W-11 & W-12. Photocopy of documents Exhibit W-12/36 to W-12/47 simply indicate that the present applicant/ workman was in engagement of the management but it doesn't show that he had completed 24 days in year preceding his disengagement. Hence in such a situation, only the self serving statement of the workman which no where declares the exact date of his termination from service is not sufficient to hold that the workman had completed 24 days in continuous employment of the management in the year preceding the date of his disengagement. Accordingly it is held that continuous employment of the workman for a period of 24 days or more in the year preceding date of his termination is not proved. Hence his termination cannot be held violative of Section 25-F.

16. One other ground taken by workman in his statement of claim that juniors to him were regularized in service but there is no evidence on this point hence on this ground also, the termination cannot be held as bad in law.

17. On the basis of above discussion, the termination of the workman is held justified in law and fact. Point No.2 is answered accordingly.

18. In the result, award is passed as under:–

1. The action of the management of Central Tasar Research and Training Institute (under Silk Board) in terminating the services of Shri Sawandas, S/o Shri Samarudas and regularizing the services of his juniors overlooking his seniority is legal and justified.

2. Workman is not entitled to any relief.

Dated: 16.7.2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1792.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 60/2013, 62/2012, 67/2013, 68/2013, 69/2013, 77/2013, 78/2013, & 79/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.09.2019 को प्राप्त हुआ था।

[सं. एल–22012/18, 21, 35, 34, 36, 39, 38 & 37/2013–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1792.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2013, 62/2012, 67/2013, 68/2013, 69/2013, 77/2013, 78/2013 & 79/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.09.2019.

[No. L-22012/18, 21, 35, 34, 36, 39, 38, & 37/2013–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/60/2013 with CGIT/LC/R 62/2012, 67/2013, 68/2013, 69/2013, 77/2013, 78/2013 & 79/2013

Secretary,
Bhartiya Khadan Mazdoor Sangh,
Branch Hasadeo Area,
Qr.No.1022,
Miners Colony, Double Story,
PO Bijuri,
Distt. Annuppur (MP) …Workman Union

Versus

Sub Area Manager,
Baherabandh Sub Area of SECL,
PO Baherabandh,
Distt. Annuppur (MP) … Management

AWARD

Passed on this 31st day of July 2019

• (a) As per letter dated 9-4-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/18/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Raghunath Prasad Namdeo less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(b) As per letter dated 9-4-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/21/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Ramanuj Tiwari less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(c) As per letter dated 1-5-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/35/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Krishnaranjan Singh less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(d) As per letter dated 1-5-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/34/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Rajesh Kumar Nigam less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(e) As per letter dated 6-5-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/36/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Dilip Kumar Tripathi less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(f) As per letter dated 29-5-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/39/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Dharnidhar Mishra less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(g) As per letter dated 29-5-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/38/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Tirath Prasad Patel less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

(h) As per letter dated 29-5-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/37/2013-IR(CM-II). The dispute under reference relates to:

"**Whether the action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of Shri Prem Shankar Mishra less than that of his junior employee is legal and justified? If not, what relief the workman is entitled to?"**

Separate case, as mentioned above, were registered on the basis of references.

- **Since the facts and evidence in these cases is common, though recorded separately, points involved are also common hence they are being disposed by a common judgment.**

• According to the pleadings of the parties in these cases which is common, the **case of workmen** is that admittedly the applicant workmen are senior to other co-workmen Tomi Kuriya Kase and all were posted as mechanic Cat-V vide order of management dated 2-1-2006. Thereafter the applicant workmen were promoted to

Cat-VI vide order dated 21-22/12/2008. According to the workmen, their co-worker Tomi Kuriya Kase was promoted from Cat-V to Cat-VI vide order dated 9-9/2/2009 and a scale higher than the applicant workman who were promoted earlier to Tomi Kuriya Kase.

• The **case of management** is that the workman Tomi Kuriya Kase was not promoted rather he was granted upgradation in higher category vide order dated 9-19/2/2009 hence this anomaly in pay is due to Service Linked Upgradation. Documents format of submission of claim, order dated 2-1-06, the seniority list of mechanical fitters in Cat-V, Office order dated 21-22/1/2008 promotion order of applicant workman from Cat-V to Cat-VI w.e.f. 10-1-06. Office order dated 1-1-2-10 regarding promotion of workman Tomi Kuriya Kase from Cat-V to Cat-VI w.e.f. 1-1-2010 (all photocopies)have been filed by applicant workman in these cases which have been admitted by management, marked Exhibit W-1 to W-5 respectively. The workmen have examined themselves on oath separately in these cases.

• Management has filed photocopy of NCWA-VIII, Implementation Instruction No.23 dated 24-5-2010, office order dated 9-19/2/2009 allowing Service Linked Upgradation to co-workman Tomi Kuriya Kase which have already been filed by applicant workman. The documents have been marked Exhibit M-1, M-2 & M-3.

• I have heard argument of learned counsel Shri R.R.Jain on behalf of applicant workmen union and Shri A.K. Shashi, learned counsel for management and have gone through the records as well.

- According to learned counsel for applicant/workmen, there is no dispute that the applicant workmen and their co-workman Tomi Kuriya Kase were in the same cadre on the same post Cat-V Mechanic and the applicant workmen were senior to their co workman Tomi Kuriya Kase. This is also ot disputed that the applicant workmen were promoted to Cat-VI Mechanic on 21-22/1/2008 whereas their co-worker Tomi Kuriya Kase was granted scale of Mechanic Cat-VI vide order dated 9-19/2/2009. Hence**,** he was promoted to mechanic Cat-VI vide order dated 1-1-2010. A person in the same cadre who was promoted later than the applicant workman is getting more salary and higher scale than the workman which is against law and requires to be corrected.
- Learned counsel for management has submitted on the other hand that admittedly the applicant/ workmen were senior to Tomi Kuriya Kase their co-workman when they all were in mechanical cadre Cat-V and applicant workmen were promoted earlier to co-workman Tomi Kuriya Kase but Tomi Kuriya Kase was granted service linked upgradation as per NCWA-VIII Implementation Instruction No.23 because he could not be promoted within time stipulated hence his salary was upgraded due to service linked upgradation and it is due to this, he has been getting salary more than the applicant workman after his salary was fixed as per rules when he was promoted to Cat-VI Mechanic vide order dated 1-1-2010.

• Learned counsel has also submitted that the co-workman Tomi Kuriya Kase is a necessary party because if the applicant workmen succeed, he will be adversely affected hence his version also requires to be taken before deciding the reference.

• On perusal of records in the light of rival argument, following common points arise for determination in the cases:-

• **Whether the co-workman Tomi Kuriya Kase is a necessary party in these cases?**

• **Whether the fixation of salary of applicants after their promotion granting them salary less than that of his junior employee Tomi Kuriya Kase is justified in law or fact?**

• **Whether the applicant workmen are entitle to any relief?**

• **Point for determination No.1-**

• The argument of learned counsel for management regarding impleadment of co-worker has been opposed by learned counsel for applicant workers on the ground that if the reference is decided in favour of applicant workman it will no where reduce the salary or wages of co-worker Tomi Kuriya Kase hence he is not affected by award. I find substance in this argument of learned counsel for workman because if the award is passed in favour of applicant workmen, salary and wages as well as scale which the co-worker is getting is not going to be affected rather the applicant workman may be getting salary and wages at par their co-worker Tomi Kuriya Kase. Hence holding that co-worker Tomi Kuriya Kase is not a necessary party to this reference. Point No.1 is answered accordingly.

- **Point for determination No. 2-**

- Before entering into any discussion on merits, it will be proper to reproduce directions under NCWA-VIII Implementation Instruction No.23, particularly Direction No.1 &2

Direction No. 1 & 2-

- When the senior employee promoted to a higher post and draws less pay than his/her junior in the revised pay in NCWA-VIII.
- Senior employee in the same pay and covered by the same seniority list and same designation in a cadre as his junior but due to different dates of increment the junior starts getting higher pay than his senior. The removal of such anomalies will be subject to the following conditions-
- Both the junior and senior employee should belong to the same cadre and the post/grade/category in which they have been promoted should be covered by the same seniority list and same cadre.
- The pre-revised and revised pay of lower and higher post in which they are entitled to draw pay should be identical;
- **The anomaly should be directly as a result of application of normal rules of fixation on such promotion in the revised pay and as a result of fixation of pay in the revised pay under NCWA-VIII. The next date of increment of the senior employee will be the same as that of junior employee."**

These directions are contained in Exhibit M-2 filed and proved by management. Perusal of these directions reveals that **anomaly in pay fixation like less payment to seniors which is consequent on promotion may be rectified as per these rules but these rules donot provide anomaly in pay due to service linked upgradation**. Learned counsel for workmen has referred to. Office order dated 9-19/2/2009 allowing Service Linked Upgradation to co-workman Tomi Kuriya Kase which have already been filed by applicant workmen. These documents have been marked Exhibit M-1, M-2 & M-3 establish that the co workman Tomi Kuria Kose got enhanced scale due to service linked upgradation.

1. When a senior employee is promoted to a higher post before 1st July 2011 draws less pay in the revise pay than his/her junior who is promoted later to the higher post.

2. Senior employee in the same pay and covered by the same seniority list and same designation in a cadre and who has secured fixation at the same stage as his junior but due to different dates of increment the junior starts getting higher pay than his senior. The removal of such anomalies will be subject the following conditions.

(a) The pre revised and revised pay of lower and higher post which they are entitled to draw pay be identical.

(b) The anomaly should be directly as a result of application of normal rules of fixation on such promotion in the revised pay and as a result of fixation of pay in the revised pay under NCW-IX. The next date of increment of the senior employee will be the same as that of junior employee.

(c) If even, in the lower post the junior employee was drawing more pay in the pre revised pay than the senior by virtue of any advance increment granted to him these provision shall not apply in such cases.

This circular also does not help the applicant workmen because the co worker Tomy Kuria Kase was given advance increment.

Hence, holding the fixing up of basic wages of applicant workmen less than that of their junior employee Tomi Kuriya Kase who was junior to applicant workman at one point of time when they all were in Category V cadre cannot be faulted in law on fact, point for determination No. 2 is answered against applicant workmen.

- In the result, award is passed as under:-

The action of the Sub Area Manager, Baherabandh of SECL in fixing up basic wages of the workmen in the aforesaid references, less than that of his junior employee is legal and justified.

Workmen in the aforesaid references are not entitled to any relief.

- Let the copies of the award be placed on records of connected references as mentioned above and be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2019

का.आ. 1793.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केंद्रीय रेशम बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या सी.आर. 26/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को **25.09.2019** को प्राप्त हुआ था।

[सं. एल–42012/171/2001–आईआर (सीएम–II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 25th September, 2019

S.O. 1793.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CR 26/2002) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, BANGALORE as shown in the Annexure, in the industrial dispute between the Management of Central Silk Board and their workmen, received by the Central Government on 25.09.2019.

[No. L-42012/171/2001–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 18TH SEPTEMBER 2019

PRESENT : Justice Smt. Ratnakala, Presiding Officer

CR No. 26/2002

I Party	**II Party**
Sh. N. Rajanna, S/o Narasaiah, C/o Veranna R, 298, Kamakshipalya, Magadi Main Road, Bangalore – 560023.	The Chairman, Central Silk Board, Head Office, CSB, Complex, BTM Layout, Madiwala, Bangalore - 560 068.

Appearance :

Advocate for I Party : Mr. D.R. Vishwanath Bhat

Advocate for II Party : Mr. N.S. Narasimha Swamy

AWARD

The Central Government vide Order No.L-42012/171/2001-IR(CM-II) dated 27.05.2002 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the Management of Central Silk Board, Bangalore in removing Sh. N. Rajanna, UDC from services w.e.f. 28.03.1995 is legal and justified? If not, to what relief the workman is entitled to?"**

1. The fact is,

The 1st Party workman joined the 2nd Party as Lower division Clerk in the year 1983; after confirmation of his service he was promoted as Upper division Clerk in the year 1989-90. He was transferred to Basic Seed Farm Hindupur, Parigi, in the year 1991. He was issued Charge Sheet on certain allegation; on conducting Domestic Enquiry on the charges, he is removed from service w.e.f. 28.03.1995.

It is the grievance of the 1st Party workman that, the Domestic Enquiry was conducted ex-parte in violation of the provisions of CCS, CCA Rules. No opportunity was afforded to him to contest the charges. The allegations made against

him are all false and the order of removal is harsh, excessive and highly disproportionate compared to the allegations made against him. He has no source of income to maintain himself and his dependent family.

2. The 2nd Party contested the claim on the ground that, two Charge Sheets were issued, one in respect of misconduct of absenteeism and another in respect of misappropriation of Government money. It was maintained that, the Charge Sheets were sent to him returned undelivered with a Postal intimation *"left, as not known and not claimed"* respectively. He did not send any communication, left with no alternative the Disciplinary Authority appointed an Enquiry Officer to enquire into the charges. Accordingly, the Enquiry Officer conducted a detailed Departmental Enquiry. Enquiry notices were sent to his address and returned unclaimed, the Enquiry Officer placed him ex-parte and submitted enquiry report holding him guilty of the charges. The Enquiry report was sent to him along with memo dated 02.01.1995, he received the same and sought for seven days time to submit his reply but he did not submit any. Based on the Enquiry report, the 2nd Party imposed penalty of removal from service dated 28.03.1995.

It is further stated by 2nd Party that the 1st Party made an attempt to report to duty on 18.07.1998, since Punishment Order was already passed, concerned Officer did not permit him to report to duty. He preferred an appeal before the Appellate Authority on 21.07.1988 but the appeal was time barred and was rejected. He came with a representation dated 04.10.1999 requesting to reconsider the order. His request was considered by the concerned Officer and was rejected.

3. On the rival contentions regarding the fairness of the Domestic Enquiry, a Preliminary Issue was framed and was answered that *'the Domestic Enquiry held against the 1st Party by the 2nd Party is not fair and proper'*. The 2nd Party thereafter, examined four witnesses to substantiate their charges; rebuttal evidence is adduced by 1st Party workman and he examined one additional witness on his behalf.

Written argument is submitted for the 1st Party and Oral argument is submitted for the 2nd Party.

4. I find from the record that Domestic Enquiry was conducted by the Enquiry Officer on the allegations mentioned in the Show Cause Notice dated 06.10.1993 that was served on the workman without there being two Charge Sheets as claimed in the Counter Statement.

Epitomised version of the allegation in the show cause notice is,

The 1st Party workman attended the Office on 08.06.1993 failed to explain about the Official tour particulars of 07.06.1993 to the Assistant Director, left the Office at 10:00 am without informing the Assistant Director. Later, he submitted a Leave letter dated 08.06.1993 requesting for leave from 07.06.1993 to 06.07.1993 on medical grounds; again, he extended the leave from 07.07.1993 to 06.09.1993 and remained absent till date causing serious dislocation in the Office work. Despite sending telegram by the Assistant Director 15.06.1993, 30.06.1993, 09.07.1993, 22.09.1993 and a memo dated 21.06.1993 to report to duty at P2 Farm, Parigi, he failed to report till date. The leave letters submitted by him are contradictory to the Medical Certificate submitted by him and also to his physical presence in the Office 08.06.1993 as reported. A doubt has arisen about the genuinity of the Medical Certificate submitted by him.

He has taken temporary advance of Rs. 500/- (Five Hundred rupees) from the Office on 26.05.1993 in connection with purchase of diesel / repairs to tractor. Inspite of reminding him by the Assistant Director, P2 Farm, Parigi, vide telegrams dated 15.06.1993, 30.06.1993, 09.07.1993, and 22.09.1993, he failed either to settle the advance or to submit the bills, he has not settled the temporary advance of Rs. 500/- (Five Hundred Rupees) taken on 26.05.1993 and misappropriated the Government money for his personal gain.

By the above conduct he failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Government Servant thereby, contravening Rule 3 (1) (i) to (iii) of Central Civil Service 1964.

5. The first witness examined by the Management was Sh. B Krishna Murthy / MW-1, an Official who was working at P2 Basic Seed Farm Parigi. As per his affidavit evidence on 08.06.1993 he witnessed the 1st Party entering into unnecessary arguments with the Assistant Director and leaving the Office around 10:00 am. Though, cross examined thoroughly there was no suggestion to the witness that the 1st Party did not attend the Office on 08.06.1993.

The second witness is Sh. Shiva Reddy, Assistant Director/ MW-2. Much beyond the allegations levelled in the Show Cause Notice, he has averred in his affidavit evidence about posting the 1st Party to Chikkamalawadi on official duty on 07.06.1993 and the 1st Party on 08.06.1993 after reporting to duty not appraising about the tour undertaken by him on the previous day etc. The witness has further stated that, when questioned by him about the non-appraisal of the tour and also other pending work the 1st Party workman raised his voice, made unnecessary argument in loud voice, questioned his competency and left the Office declaring that he would be going on leave whether leave is sanctioned or not.

Further, he has averred to the effect that several letters and telegrams were sent to the 1st Party calling upon him to report to duty but he failed to do so. However, 1st Party sent a leave letter dated 08.06.1993 stating that he left for Chikkamalawadi on 07.06.1993, suffered chest pain and stomach pain and was forced to move to Bangalore. The witness

identified letter given by the 1st Party as Ex M-2 dated 08.06.1993 wherein, he sought leave for 30 days from 07.06.1993 to 06.07.1993 and also furnished his address at Bangalore for further communication.

The third witness / MW-3 was Sh. J R Venkataramana, another Official in the Office. As per his affidavit evidence he attended a meeting held in the Office 22.06.1993 which was held for the purpose of discussing the contradictory statement furnished by the 1st Party about his presence in the Office, in his leave letter dated 08.06.1993. As per his observation, the 1st Party was behaving carelessly and was in the habit of involving in unwanted argument.

The fourth witness / MW-4 was Smt. K P Kalpana another Official of the Office, her evidence was in line with that of MW-3.

All the four witnesses are signatories to the Special meeting held on 29.06.1993. In the said proceedings they have recorded the statement of MW-1 and MW-2 wherein, they have stated that the 1st Party physically attended the office on 08.06.1993 and was present upto 10:00 a.m; he entered into dialogue with MW-3 about the Office tour performed by him to Chikkamalawadi. When MW-2 asked him to submit the registers of allotted work for verification he started unnecessary argument and left the Office at 10:00 am by saying *'I am going on leave whether sanctioned or not and let it be treated leave without pay'*.

6. The version of the 1st Party workman in his affidavit / rebuttal evidence was that, he was directed to go to Chikkamalawadi on Official visit on 07.06.1993 but he could not reach Chikkamalawadi though he left BSF, Parigi. Since, he suffered serious chest pain and stomach pain he returned to Bangalore on same day and rushed to the Hospital. He applied for leave from 07.06.1993 to 06.07.1993; during the said period he was taking treatment at Victoria Hospital, he was advised bed rest upto 13.07.1998. On 08.06.1993, he had not been to Chikkamalawadi and there was no untoward incident as alleged on 08.06.1993.

With regard to misappropriation of advance amount of Rs. 500/- (Five Hundred Rupees), his version is Rs. 449.53 (Four Hundred and Forty Nine Rupees Fifty Three paisa) was spent for maintenance of the Tractor, he had submitted the account to the 2nd Party for the balance unused amount of Rs. 50.47 (Fifty Rupees Forty Seven Paisa) he has sent DD dated 14.07.1993 drawn in favour of 2nd Party Management. The proceedings of Ex M-1 are all false. He is enrolled as an Advocate but not getting sufficient income to maintain his family and wants to continue his service. He identified the Medical Certificate issued to him by the Victoria Hospital stating that, he was indisposed from 07.06.1993 to 06.07.1993 from Enteric fever and Acid peptic … (illegible) (this Certificate was enclosed by him along with his leave letter). The tone of his cross examination is, he reported to the Office on 08.06.1993 quarrelled with Sh. Shiva Reddy.

7. At the instance of 1st Party workman records were called for from the National Institute of Mental Health and Neuro Science. A Senior Resident of the hospital has produced the case records pertaining to the 1st Party which is marked as Ex W-6; he is not a Doctor who treated the 1st Party nor he had seen him earlier. On the basis of the records he deposed that, the 1st Party had taken treatment at NIMHANS from 28.12.1985 to 23.04.2003 for sleeplessness, lack of confidence in work and headache for one and half years; after detailed evaluation he was diagnosed for DYSTHYMIC disorder. He was given Fitness Certificate, as per Ex W-2 he was fit to resume duty from 15.07.1998.

8. Viewing the above evidence in the spectrum of the allegations made against him following is the resultant.

As such the allegation is in his leave letter dated 08.06.1993, he had sought leave from 07.06.1993 to 06.7.1993 which was an untrue fact, since, he had attended the Office on 07.06.1993 after his Official visit he had attended the Office on 08.06.1993. He had extended his leave upto 06.09.1993 but remained absent thereafter. The Parties are at quarrel with regard to one fact i.e. whether or not he was in the office on 08.06.1993. While the 2nd Party alleged that he had come to the Office at 08.06.1993, the 1st Party would refute the same that he could not proceed to the Out Station on 07.06.1993 because of his Health Problem and remained absent from 07.06.1993. There is no allegation in the Show Cause notice of 06.10.1993 about any confrontation entered into by the 1st Party with his Superior Officer. Much is said about the incident of 08.06.1993 i.e. when enquired by MW-2 about the work assigned to him, he flared up and left the Office. For our purpose we are only concerned whether the 1st Party voluntarily remained absent without seeking leave. As claimed by the 1st Party in his claim statement, he approached the 2nd Party with his duty report on 15.07.1998 but by that time he was already dismissed from service. What is the material placed by him regarding his absence upto 14.07.1998, the Medical Certificate issued by the Victoria Hospital pertains to his Physical aliment for the period 07.06.1993 to 06.07.1993. Excluding this period, no document is placed on record evincing that he was incapable of performing his duty as Upper Division Clerk, he has produced the Fitness Certificate issued by NIMHANS dated 15.07.1998 but the Medical Certificate from NIMHANS does not indicate that he was under treatment continuously from 06.07.1998 to 15.07.1998. His first visit to the NIMHANS was 28.12.1985 for evaluation etc., thereafter his next visits were on 15.06.1998, 22.06.1998 and 23.04.2003. There is not even a piece of document that he was unable to attend the duty after 06.09.1993, he has not produced any document to show that he had applied for leave with supporting Medical document. He has not shown that for the integrum period he was incapacitated to work and was advised rest.

9. The 2nd allegation is, he misappropriated the advance amount of Rs. 500/- (Five Hundred Rupees) he has produced the duplicate of the DD drawn in favour director NSSP dated 14.07.1993 drawn on SBM for Rs. 50.47 (Fifty Rupees Forty Seven Paisa), he has produced the counter copy of settlement of advance Ex W-6 & Ex W-7 wherein, he has given numbers of bill pertaining to Rs. 449.53 (Four Hundred and Forty Nine Rupees Fifty Three Paisa) against the advance of Rs. 500/- (Five Hundred Rupees). These documents are originated prior to issue of show cause notice of 06.10.1993. The veracity of the document is not controverted.

Thus, the resultant factor is he remained absent without applying for leave and without valid reason from 06.09.1993. None of the MWs would state whether leave was sanctioned on his leave letter; how much leave was pending in his credit. Unfortunately, the Show Cause notice on which Domestic Enquiry was held and evidence is adduced by the Management before this Tribunal does not say that he remained unauthorisedly absent. The focus in the Show Cause notice is on the fact that, he was physically present in the Office on 08.06.1993. Shouting against the Superior Officer, left the Office without marking his attendance on 08.06.1993, said incident is not stated as imputation of specific misconduct of insubordination towards the Superior Officer. Of course Sh. NSN for the 2nd Party vehemently urged that shouting against a Superior Officer is serious misconduct which warrants stringent punishment. But I am not in agreement with this submission for the reason that the workman was not charged for the offence of insubordination against the superior in the show cause notice. Has quoted by 2nd Party in the show cause notice the provisions of Central Civil Services Classification Control and Appeal Rules, for imposition of major penalty the procedure is contemplated by Rule 14 of the above Rules. Under sub rule 2 of Rule 14 .

'Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of Public Servants (inquiries) Act, 1850, as the case may be, an Authority to inquiry into the truth thereof'. Sub rule 3 of Rule 14 reads thus:

'Where it is proposed to hold an inquiry against a Government Servant under this rule and Rule 15, the Disciplinary Authority shall draw up or cause to be drawn up —

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct article of charge;

(ii) a statement of imputation of misconduct or misbehaviour in support of each article of charge, which shall contain –

a) a statement of all relevant facts including any admission or confession made by the Government Servant;

b) a list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained.

In the case on hand, the enquiry before this Tribunal was totally vested on the show cause notice which does not qualify to the description of charge sheet contemplated by sub rule 3. The frame of show cause notice on which enquiry is held before this Tribunal is ambiguous and fails to make out allegation of misconduct with specification.

10. The 1st Party failed to justify his absence from duty from 06.09.1993 onwards, still having noticed that the 2nd Party before this Tribunal adduced evidence on the basis of the ambiguous Show Cause Notice and gave undue weightage to the so called incident of 08.06.1993 (whereby, he entered into confrontation with his Superior Officer etc.) I am of the considered opinion that, the order of **removal from Board's service** which shall be disqualification for future employment under the Government as provided in the Rule ii(vii) of CCS (CCA) Rules 1965 and thereby relieving him from service was not justified.

11. Having landed at the conclusion as above now comes the question of moulding the relief. He has already crossed the age of superannuation; hence, reinstatement to his original Post is out of question. Vide order dated 09.02.2007 he was granted interim relief till disposal of the proceedings at the rate of his last drawn wages i.e. wages he was drawing when he was removed w.e.f. 01.06.2006. Thus, he has not suffered acute financial distress consequent upon his dismissal and also he is a practising Advocate. He failed to convince this Tribunal, the bonafides of his absence from duty from 06.09.1993 to 15.07.1998 (the date on which he attempted to report to duty) he is entitled for monetary compensation of Rs. 1,00,000/-(Rupees One lakh only).

AWARD

The reference is accepted.

The action of the 2nd Party in removing Sh. N. Rajanna, UDC from service is not justified. The 2nd Party is directed to pay monetary compensation of Rs. 1,00,000/- (Rupees One lakh only) to the 1st Party workman within 60 days of publication of the Award in the Official Gazette.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 18th September, 2019)

Justice Smt. RATNAKALA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1794.—राष्ट्रपति, पीठासीन अधिकारी, केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय संख्या 1, मुंबई का अतिरिक्त प्रभार पीठासीन अधिकारी केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय संख्या 2, मुंबई को दिनांक 26.08.2019 से छह माह की अवधि के लिए, या अगले आदेशों तक, जो पहले हो, सौंपते हैं, वे राष्ट्रीय महत्व के औद्योगिक विवादों को छोड़कर, जिन्हें राष्ट्रीय औद्योगिक अधिकरण, कोलकाता के पीठासीन अधिकारी द्वारा सुनना जारी रहेगा, अन्य सभी मामलों को सुनेंगे। पीठासीन अधिकारी, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय/ राष्ट्रीय औद्योगिक अधिकरण, कोलकाता राष्ट्रीय महत्व के औद्योगिक विवादों की इस आदेश के जारी होने की तिथि से ही सुनवाई करेंगे। वे औद्योगिक विवाद अधिनियम, 1947 (1947 की 14) की धारा 7ख के अंतर्गत राष्ट्रीय महत्व के अलावा अन्य कोई मामले की सुनवाई नहीं करेंगे।

[सं. जैड-20017/02/2019-सीएलएस-II]

राज कुमार, उप सचिव

New Delhi, the 26th September, 2019

S.O. 1794.—The President is pleased to entrust the additional charge of the post of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai to Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.2, Mumbai for a period of six months with effect from 26.08.2019 or until further order, whichever is the earlier, to hear all matters other than the Industrial Disputes of National Importance which will continue to be heard by the Presiding Officer of National Industrial Tribunal, Kolkata. The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court/National Industrial Tribunal, Kolkata will hear the Industrial Disputes of National Importance only from the date of issue of this order. He will not hear any matter other than of national importance within the meaning of Section 7B of the Industrial Disputes Act, 1947(14 of 1947).

[No. Z-20017/02/2019-CLS-II]

RAJ KUMAR, Dy. Secy.

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1795.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विशाखापटनम पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (33/2011, 34/2011, 36/2011, 38/2011, 39/2011, 40/2011, 41/2011, 48/2011, 49/2011, 50/2011, 51/2011, 52/2011, 53/2011, 54/2011, 55/2011, 61/2011, 62/2011, 63/2011, 65/2011, 66/2011, 67/2011, 68/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2019 को प्राप्त हुआ था।

[सं. एल–34012/22/2011–आईआर (बी-II),

सं. एल–34012/15/2011–आईआर (बी-II),

सं. एल–34011/1/2011–आईआर (बी-II),

सं. एल–34012/21/2011–आईआर (बी-II),

सं. एल–34012/1/2011–आईआर (बी-II),

सं. एल–34012/5/2011–आईआर (बी-II),

सं. एल–34012/4/2011–आईआर (बी-II),

सं. एल–34012/2/2011–आईआर (बी-II),

सं. एल–34012/16/2011–आईआर (बी-II),

सं. एल–34012/6/2011–आईआर (बी-II),

सं. एल–34012/10/2011–आईआर (बी-II),

सं. एल–34012/9/2011–आईआर (बी-II),

सं. एल–34012/8/2011–आईआर (बी-II),

सं. एल–34012/7/2011–आईआर (बी-II),

सं. एल–34012/3/2011–आईआर (बी-II),

सं. एल–34012/19/2011–आईआर (बी-II),

सं. एल–34012/20/2011–आईआर (बी-II),

सं. एल–34012/12/2011–आईआर (बी-II),

सं. एल–34012/14/2011–आईआर (बी-II),

सं. एल–34012/18/2011–आईआर (बी-II),

सं. एल–34012/11/2011–आईआर (बी-II),

सं. एल–34012/17/2011–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1795.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2011, 34/2011, 36/2011, 38/2011, 39/2011, 40/2011, 41/2011, 48/2011, 49/2011, 50/2011, 51/2011, 52/2011, 53/2011, 54/2011, 55/2011, 61/2011, 62/2011, 63/2011, 65/2011, 66/2011, 67/2011, 68/2011 of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad* as shown in the Annexure, in the industrial dispute between the management of *Visakhapatnam Port Trust,* and their workmen, received by the Central Government on 26.09.2019.

[No. L-34012/22/2011 -IR(B-II),

No. L-34012/15/2011 -IR(B-II),

No. L-34011/1/2011-IR(B-II),

No. L-34012/21/2011-IR(B-II),

No. L-34012/1/2011-IR(B-II),

No. L-34012/5/2011-IR(B-II),

No. L-34012/4/2011-IR(B-II),

No. L-34012/2/2011-IR(B-II),

No. L-34012/16/2011-IR(B-II),

No. L-34012/6/2011-IR(B-II),

No. L-34012/10/2011-IR(B-II),

No. L-34012/9/2011-IR(B-II),

No. L-34012/8/2011-IR(B-II),

No. L-34012/7/2011-IR(B-II),

No. L-34012/3/2011-IR(B-II),

No. L-34012/19/2011-IR(B-II),

No. L-34012/20/2011-IR(B-II),

No. L-34012/12/2011-IR(B-II),

No. L-34012/14/2011-IR(B-II),

No. L-34012/18/2011 -IR(B-II),

No. L-34012/11/2011-IR(B-II),

No. L-34012/17/2011-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan **,** Presiding Officer

Dated the 12th day of September, 2019

INDUSTRIAL DISPUTE Nos.
33/2011, 34/2011, 36/2011, 38/2011, 39/2011, 40/2011,41/2011, 48/2011, 49/2011, 50/2011, 51/2011, 52/2011, 53/2011, 54/2011, 55/2011, 61/2011, 62/2011, 63/2011, 65/2011, 66/2011, 67/2011 and 68/2011

Between:

Sri S.S. Partha Saradhi & 27 others
C/o Visakhapatnam Port Empl. Union
26-15-204, Dharmasakti Bhavan,
Visakhapatnam -530 001.

S. No.	ID No.	Reference order No. & date.	Name of the workman S/Sri/Smt. & worked as	Date of termination
1	**33/2011**	**L-34012/22/2011-IR(B.II); 18.7.2011**	**P. Krishna Mohan; Ex-Cleaner**	**1.10.2010**
2	**34/2011**	**L-34012/15/2011-IR(B.II); 19.7.2011**	**B. Nageswara Rao; Ex-Cashier**	**1.10.2010**
3	**36/2011**	**L-34011/1/2011-IR(B.II); 18.7.2011**	**S.S. Partha Saradhi; Ex-Manager**	**1.10.2010**
4	**38/2011**	**L-34012/21/2011-IR(B.II); 18.7.2011**	**Late P. Sriramulu; per LRs: P.Suramma(Wife);P.Pydirajau, P.Kanakaraju & P.Siva-Sons Ex-Rickshaw Pullar**	**1.10.2010**
5	**39/2011**	**L-34012/1/2011-IR(B.II); 18.7.2011**	**A. Govinda Rao; Ex-Helper**	**1.10.2010**
6	**40/2011**	**L-34012/5/2011-IR(B.II); 19.7.2011**	**G. Sankara Rao; Ex-Helper**	**1.10.2010**
7	**41/2011**	**L-34012/4/2011-IR(B.II); 19.7.2011**	**K. Jagadeeswara Rao; Ex-Supervisor**	**1.10.2010**
8	**48/2011**	**L-34012/2/2011-IR(B.II); 18.8.2011**	**Y. Ramanjaneyulu; Ex-Cashier**	**1.10.2010**
9	**49/2011**	**L-34012/16/2011-IR(B.II); 17.8.2011**	**M. Dayakara Rao ; Ex-Cook**	**1.10.2010**
10	**50/2011**	**L-34012/6/2011-IR(B.II); 17.8.2011**	**CH. Nooka Raju; Ex-Helper**	**1.10.2010**
11	**51/2011**	**L-34012/10/2011-IR(B.II); 17.8.2011**	**S.G.V. Simhachalam; Ex-Cleaner**	**1.10.2010**
12	**52/2011**	**L-34012/9/2011-IR(B.II); 17.8.2011**	**Y. Santamma; Ex-Cleaner**	**1.10.2010**
13	**53/2011**	**L-34012/8/2011-IR(B.II); 17.8.2011**	**K. Nookalamma; Ex-Cleaner**	**1.10.2010**
14	**54/2011**	**L-34012/7/2011-IR(B.II); 17.8.2011**	**K. Lakshmana Rao; Ex-Cleaner**	**1.10.2010**
15	**55/2011**	**L-34012/3/2011-IR(B.II); 17.8.2011**	**P. Someswara Rao; Ex-Cashier**	**1.10.2010**
16	**61/2011**	**L-34012/19/2011-IR(B.II); 19.9.2011**	**M. Pydi Raju; Ex-Supplier**	**1.10.2010**
17	**62/2011**	**L-34012/20/2011-IR(B.II); 19/20.9.2011**	**T. Suri Babu; Ex-Supplier**	**1.10.2010**
18	**63/2011**	**L-34012/12/2011-IR(B.II); 19.9.2011**	**M. Krishna; Ex-Cleaner**	**1.10.2010**
19	**65/2011**	**L-34012/14/2011-IR(B.II); 19.9.2011**	**S. Seshagiri Rao; Ex-Assistant**	**1.10.2010**

			Manager	
20	**66/2011**	**L-34012/18/2011-IR(B.II); 19.9.2011**	**K. Appala Ravulu; Ex-Cook**	**1.10.2010**
21	**67/2011**	**L-34012/11/2011-IR(B.II); 19.9.2011**	**S. Appa Rao; Ex-Cleaner**	**1.10.2010**
22	**68/2011**	**L-34012/17/2011-IR(B.II); 19.9.2011**	**M. Appa Rao; Ex.Cook**	**1.10.2010**

…Petitioners

AND

The Chairman,
Visakhapatnam Port Trust,
Cargo Handling Division, Port Area,
Visakhapatnam (A.P.) – 530 001. …Respondent

Appearances:

For the Petitioner : M/s. P. Suresh & G. Dhana Raju, Advocates

For the Respondent : M/s. P. Sri Ram & M. Jaya Kumar, Advocates

COMMON AWARD

Reference No. L-34011/1/2011-IR(B.II) dated 18.7.2011 is received in the name of Sri S.S. Partha Saradhi and 27 others. But, as per the memo filed by the Advocate for the Petitioners in ID No.36/2011, out of the above 28 persons, two persons namely P. Sri Ramulu, Petitioner in ID No.38/2011 was expired for which his LRs were substituted in record and another Petitioner namely, G. Venkata Swami also expired. Six persons did not prefer to file their claim statement. Only, S.S. Partha Saradhi and 21 others including the LRs of deceased P. Sri Ramulu filed the claim statement and all the 22 (twenty two) cases were clubbed in ID No.36/2011 vide order dated 28.11.2011 and as the cause of action of all the cases are one and the same a common award is passed for the convenience of the parties as the facts and law involved in all the cases are same. The Government of India, Ministry of Labour by its orders (as per cause title) referred the industrial disputes under Sec.10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the same. The schedule of all these references is one and the same, which reads as under:-

SCHEDULE

"Whether the action of the management of Visakhapatnam Port Trust, Cargo Handling Division, Visakhapatnam in terminating the services of Sri S. S. Partha Saradhi and 27 others, (name of the workman in each reference is mentioned respectively in each schedule) ex-Canteen workers of Cargo Handling Division (as per the list enclosed) w.e.f. 1.10.2010 is legal and justified? What relief the concerned workmen are entitled to?"

The details of the workmen as per the respective schedules pertaining to these Twenty Two /Twenty Eight industrial disputes mentioned in the cause title. On receipt of the references, this Tribunal has registered and numbered the 22 references (mentioned above) as I.D. Nos.33/2011, 34/2011, 36/2011, 38/2011, 39/2011, 40/2011, 41/2011, 48/2011, 49/2011, 50/2011, 51/2011, 52/2011, 53/2011, 54/2011, 55/2011, 61/2011, 62/2011, 63/2011, 65/2011, 66/2011, 67/2011 and 68/2011 and issued notices to the management as well as to the workmen M/s. P. Suresh & G. Dhana Raju, Advocates appeared as counsels for the workmen in all the 22 cases and for the Respondent, M/s. P. Sri Ram and M. Jaya Kumar, Advocates appeared as counsels.

2. **The averments made in the claim statement in brief are as follows**:

The Petitioners were the employees of the Respondent management, and worked for more than 15 years continuously under the Respondent management and they were working under the management in the name and style of Dock Labour Board Canteen which has been named as Cargo Handling Division and there they were working regularly on par with other employees of the Respondent management. They were given all the facilities like the regular employees of the Respondent management including payment of PF subscription, allotment of Quarters, uniform, soaps, towels, Coop Society membership. They were also given bonus and gifts etc.. from the Respondent management. While the matter stood thus, w.e.f. 1.10.2010 the Respondent management closed the Dock Labour Board canteen without informing the workmen. Thereafter the workmen/Petitioners made several representations to the Respondent/management to absorb them in other posts, and also about the injustice caused to them. Soon after closure of the canteen the management terminated the services of the workmen without informing them. The termination of the workmen is illegal and unjust. When the Respondent management did not pay any heed to their representation, they filed an application before the Assistant Labour Commissioner (C), Visakhapatnam, with a request to direct the management to reinstate them into service. Thereafter the Assistant Labour Commissioner (C), Visakhapatnam issued notice to the management for a

conciliation with a request to absorb the Petitioners/ workmen in any post suitable to them. But the Respondent management did not consider the case of the Petitioner and the conciliation meeting ended in failure. Thereafter the Assistant Labour Commissioner (C), Visakhapatnam submitted a failure report to the Ministry of Labour and Employment, New Delhi which in turn referred the matter to this Tribunal for adjudication. It is submitted that termination of the services of the Petitioners workmen are illegal and unjust and not tenable in the eye of law. The Respondent management has violated the principles of natural justice while terminating the Petitioners workmen from their service. Now the Petitioners are unable to get any employment to provide bread and better to their family members. The management has also issued notices directing the Petitioners workmen to vacate the quarters and also threatened the Petitioners to demolish the quarters which are under their occupation. The Petitioner workmen moved this court to direct the Respondent management to allow the workmen to retain the quarter. Even though direction has been given from the court, not to evict the workmen who are in occupation of quarters, the Respondent did not obey it. It is further submitted that the governing body of the Visakhapatnam Port Trust was holding a meeting in the month of August, 2010 with regard to payment of ex-gratia/compensation under Voluntary Separation Scheme and the Respondent Board has held that a sum of Rs.5000/- will be given per year for the past service, but no information is given to the workmen till date. The Petitioners workmen got this information from the union as they are the part and parcel of the Respondent's Board. Under the circumstances stated above, the Petitioners workmen submitted to declare their termination as illegal and null and void, and to direct the Respondent management to give suitable employment to them as they have rendered more than 15 years of service in the Respondent's organization.

3. After receipt of notice though the Respondent entered its appearance but did not prefer to file any counter for which they were set ex-parte vide order dated 20.3.2012. During the course of ex-parte hearing of the case, 22 workmen have been examined and relied on 16 documents which have been marked as Exhts.W1 to W16 as all the documents filed by all the workmen are one and the same.

4. **In view of the casts stated above the points for determination are as follows**:

I. Whether the action of the management of Visakhapatnam Port Trust, Cargo Handling Division, Visakhapatnam in terminating the services of Sri S.S. Partha Saradhi and 27 others ex-canteen workers of Cargo Handling Division (as per the list enclosed) w.e.f. 1.10.2010 is legal and justified?

II. What relief the concerned workmen are entitled to?

5. I have already heard the Learned Counsel for the Petitioners and also perused the written notes of submission filed by the Learned Counsel for the Petitioners workmen.

6. **Point No. I**: The Learned Counsel appearing on behalf of the Petitioner s submitted that the workmen had been illegally terminated from service, they were working in the canteen of the Respondent management which was closed w.e.f. 1.10.2010 without their knowledge. Soon after closure of the canteen the Petitioners workmen were terminated from service. They have not been provided any other employment. They have repeatedly requested the management by filing representations to absorb them in service. But the management did not pay any heed to their request. The Petitioners workmen also approached the Assistant Labour Commissioner (C) Visakhapatnam who also directed the Respondent to absorb the workmen in service. The management did not consider the case of the workmen. Subsequently, the Assistant Labour Commissioner (C), Visakhapatnam failed to make any conciliation of the dispute and ultimately send a failure report to the Ministry of Labour and Employment who referred the dispute to this Tribunal for adjudication. He submitted that all the Petitioners workmen were working under the Respondent management on par with the regular employees of the Respondent management. The Petitioner workmen were given all sorts of facilities like regular employees of the Port Trust. But even though the Petitioners workmen were removed from service, the Respondent management failed to consider the conditions of the workmen. The termination of the service of the Petitioners workmen is illegal, unjust and ab initio void. The Respondent management may be directed to reinstate the Petitioners workmen into service. All the workmen in their chief evidence affidavit have fully supported the averments made in their claim statement. The documents relied on by the workmen under Ex.W1 to W16 coupled with the averments made in the chief evidence affidavit finds support from the averments made in their claim statement. The Respondent management did not prefer to challenge the claim of the Petitioners workmen. Thus, the unchallenged testimony of the Petitioner workmen coupled with the documentary evidence relied on by them under Ex.W1 to W16 well proves the case of the Petitioners workmen which clearly indicates that the Petitioners workmen have regularly worked for more than 15 years under the Respondent management. They were given all the facilities by the Respondent management on par with its regular employees. But, the Respondent management without considering the plight of the Petitioners workmen, made the Petitioners workmen vagrant dweller in the open road. The management should consider their case sympathetically. But the management has not shown any sympathetic attitude towards the Petitioners workmen. Therefore, the action taken by the Respondent management Visakhapatnam Port Trust, Cargo Handling Division, Visakhapatnam in terminating the services of Sri S.S. Partha Saradhi and 27 others ex-canteen workers of Cargo Handling Division (as per list enclosed) w.e.f. 1.10.2010 is not legal and not justified.

Thus, point No.I is answered accordingly.

7. **Point No.II**: In view of the findings given in Point No.I, the Petitioners workmen are entitled to get reinstatement into service and the Respondent management is directed to reinstate them into service who were on service and have been illegally terminated from their services.

Thus, Point No.II is answered accordingly.

Result:

In the result, the reference is answered as under:

The action of the management of Visakhapatnam Port Trust, Cargo Handling Division, Visakhapatnam in terminating the services of Sri S.S. Partha Saradhi and 27 others ex-canteen workers of Cargo Handling Division (as per list enclosed) w.e.f. 1.10.2010 is neither legal and nor justified. The Petitioners workmen are entitled to get reinstatement into service. The Respondent management is directed to reinstate them into service in any post as per their qualification who have not attained the age of superannuation, within a period of four months from the date of receipt of the copy of the order, failing which the Petitioners workmen are at liberty to get the order through the process of law.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 12th day of September, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: All the workmen as per cause title	NIL

Documents marked for the Petitioner

Ex.W1: Photostat copy of PF to the staff of canteen dt.17.9.1992

Ex.W2: Photostat copy of proposal with regard the alternative employment to the Canteen workers, dt. 30.7.2009

Ex.W3: Photostat copy of proposal with regard the alternative employment to the Canteen workers, dt.11.8.2009

Ex.W4: Photostat copy of bill for electricity charges for the month of March, 2010 consumed by some of the Petitioners, dt.13.2.2010

Ex.W5: Photostat copy of representation made by the Petitioners to the Respondent dt. 11.8.2010

Ex.W6: Photostat copy of lr. by the Respondent with regard to the grant of financial aid under Voluntary Separation Scheme dt. 2.9.2010

Ex.W7: Photostat copy of representation made by the Petitioner to the Respondent for the absorption sent through RPAD dt.24.9.2010

Ex.W8: Photostat copy of lr. sent by Port Employees Union in respect of absorption dt. 28.9.2010

Ex.W9: Photostat copy of lr. by ALC (C), to the Respondent dt. 30.9.2010

Ex.W10: Photostat copy of lr. by ALC (C), to the Respondent dt. 8.10.2010 for the consideration.

Ex.W11: Photostat copy of bonus for the year of 2009-2010 dt. 8.10.2010

Ex.W12: Photostat copy of note sheet with regard to Voluntary Separation Scheme dt. 21.10.2010

Ex.W13: Photostat copy of representation made by the Petitioner to the ALC(C)

Ex.W14: Photostat copy of written arguments filed by the Petitioners before the Assistant Labour Commissioner (C)

Ex.W15: Photostat copy of lr. of Respondent for furnishing the details of the Minutes held on 21.8.2010 under RTI Act dt.29.12.2010

Ex.W16: Photostat copy of the particulars of the facilities given by the Respondents to the Petitioners such as quarters & etc..

Documents marked for the Respondent

NIL

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1796.–औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 950/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2019 को प्राप्त हुआ था।

[सं. एल–12012/180/1999–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1796.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 950/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No 2*, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 26.09.2019.

[No. L-12012/180/1999-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 950/2005
Registered on:-01.12.1999

Sh. Kailash Kumar Mer, S/o Sh. Om Parkash, R/o 66/6, Shant Vihar, Khanpur, Pathankot. …Workman

Versus

Punjab National Bank through Regional Manager, Regional Office,
Opposite Radhaswamy Satsang Bhawan, New Panchayat Bhawan, Kapurthala. …Management

AWARD
Passed on:-01.08.2019

Central Government vide Notification No. L-12012/180/99-IR(B-II) Dated 29.10.1999, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Punjab National Bank in awarding the punishment of dismissal from services to Sh. Kaiash Kumar Mer is legal and just? If not, to what relief the concerned workman is entitled and from which date?"

1. Both the parties were served with notices. The workman/claimant filed statement of claim with the averment that he was working as Clerk-cum-Godown Keeper in Pathankot Branch, while he was working on 05.06.1991. He was placed under suspension and a charge-sheet was issued on 07.09.1991, followed by supplementary charge-sheet dated 20.06.1993 served on 06.06.1994. Workman submitted detailed reply to the charge-sheet, denying the charges in toto. Subsequently, New Bank of India was merged with Punjab National Bank w.e.f. 04.09.1993. Consequently, the workman became the employee of Punjab National Bank. Management lodged an F.I.R. No.41/1992 dated 10.03.1992 against the workman regarding the alleged charges, in which Police submitted report with the observation that the case

has been entrust and informed workman on 29.04.1993. He submitted representation to the Disciplinary Authority on 07.06.1994 praying for revocation of the suspension order and another representation to the Disciplinary Authority but of no relief. Under compulsion, workman filed Civil Writ Petition No.13419/1994, before the Hon'ble Punjab & Haryana High Court, for issuing a writ of mandamus, which was dismissed by the Hon'ble Court with the observation that petitioner/claimant may avail any remedy available in law. Subsequently, claimant filed an application under Section 33(C)(2) of the Industrial Disputes Act, but, due to vacancy in Industrial Tribunal Chandigarh, case could not be taken, meanwhile enquiry officer appointed by the management rushed to the departmental enquiry and submitted a report, holding some of the charges leveled against the workman to be proved. Disciplinary authority did not supply the copy of the enquiry report to the workman and accepted finding of the enquiry officer and show cause notice was issued to the claimant/workman. Disciplinary authority proposed to impose the punishment of dismissal from bank-service without notice. The workman submitted detailed reply to the above show cause notice on 06.07.1996, raising issue of non-supplying of the copy of the enquiry report along with entitlement of full pay and allowances for the entire period of suspension, disproportionateness of the penalty in the light of the past service record in the light of Clause 19.3 of the Bipartite Settlement. The Regional Manager(disciplinary authority) in arbitrary manner rejected all the pleas taken by the workman and imposed the punishment of dismissal from bank-service without any notice vide order dated 10.07.1996. Claimant preferred an appeal dated 16.08.1996 against the order of the Disciplinary Authority to the Zonal Manager, Punjab National Bank but appellate-authority rejected his appeal vide order dated 12.03.1997. Workman/claimant has prayed that in the aforesaid circumstances, he be reinstated in service from the date of dismissal with all the consequential benefits, including arrears of back wages and continuity of service with interest.

2. Respondent-bank has filed written statement, with the averment that petition is not maintainable and bad in the eye of law as claimant was placed under suspension on 05.06.1991 on account of his involvement in various fraudulent activities resorted by him while working in Branch Office, Pathankot, New Bank of India. The claimant was served with the charge-sheet dated 07.09.1991 with 48 total charges, enumerated in the charge-sheet. Reply submitted by the workman/claimant was found unsatisfactory by the disciplinary authority and departmental enquiry was issued to look into the charges. F.I.R. was also lodged by the management with the Police Division, Pathankot on 10.03.1992 and departmental proceeding was kept in abeyance in view of the police investigation in the matter of the said F.I.R.. The regional manager/disciplinary authority finding no progress in the police investigation, reinstituted the departmental enquiry and subsequent charge-sheet dated 30.06.1993 was served to the workman. The enquiry officer conducted a fair and proper enquiry and after giving full opportunity to the workman, submitted his enquiry report to the disciplinary authority on 20.05.1996. The disciplinary authority after receiving the enquiry report, enquiry proceedings and other relevant documents, looking into the gravity of misconduct, issued show cause notice dated 15.06.1996 proposing punishment of dismissal, without notice. Workman was given personal hearing, who submitted his reply to the said show cause notice and disciplinary authority with the finding of the enquiry officer, after applying his mind dispassionately, awarded punishment of dismissal from the bank-service without notice in terms of Para 19.6(a) of the Bipartite Settlement. The action of the management in awarding the punishment of dismissal from service is legal and in accordance with the law and is quite commensurate with the gravity of the charges leveled against the workman. Aggrieved by the order of the disciplinary authority, claimant filed an appeal with the Zonal Manager(Appellate Authority), which was rejected the Appellate Authority vide order dated 12.03.1997. It is also alleged that when police-authorities never concluded that there is no case for prosecution and the case has been report as entrust, enquiry was conducted after giving reasonable opportunity to the workman, order was passed by the disciplinary authority. Disciplinary authority had supplied the copy of enquiry report along with show cause notice dated 15.06.1996, which was received by the claimant and which has been admitted by the claimant in reply to the notice issued against him. It is prayed that workman is not entitled to relief whatsoever as the charges established against the workman, bank has lost his confidence and for this reason, he is also not entitled for reinstatement in the service of bank.

3. Tribunal afforded opportunity to the parties for leading evidence. Workman Kailash Kumar Mer has submitted his affidavit along with 22 documents while management has submitted affidavit of Sh. Subhash Chander, Manager HRD, Punjab National Bank, Circle Office, Kapurthala.

4. It is a matter of record that claimant/workman was dismissed from service on 07.09.1991 in pursuance of the enquiry conducted by the respondent-bank. Perusal of the file shows that this Tribunal vide order dated 19.11.2010 has held that the departmental enquiry was conducted in fair and proper manner after giving proper opportunity to the workman to defend himself as such, the enquiry was not conducted against the principle of natural justice. Perusal of the order dated 19.11.2010, it transpires that workman has asserted in his claim petition that he was not supplied the copy of enquiry report before affirming the finding of the enquiry officer regarding the charges alleged to be proved. This Tribunal has observed that workman was given copy of the enquiry report along with show cause notice dated 15.06.1996 and workman had an opportunity to give his views on the enquiry report and he had also availed this opportunity while giving reply to the show cause notice. It is pertinent to mention that there is nothing on record to show that workman/claimant has challenged the order dated 19.11.2010 before the Hon'ble Court as such, it has become final.

5. I have heard the argument of the learned counsel of the workman Sh. Anuj Kohli, and counsel of the management Sh. Saurav Verma, and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workman during the course of argument submitted that perusal of the evidence on record goes to show that management has not been able to prove the charges leveled against the workman. It is further submitted that even if it is presumed that charges are proved even then they relates to such charges which does not require punishment of termination. The impugned order of dismissal is very harsh and disproportionate against the charges leveled against him. Learned counsel also submitted that workman has good service record throughout his career. The bank has is terminated the workman from the service in mala fide manner on the basis of enquiry report in spite of the fact that police has submitted final report in favour of the workman and he should be punished according to the provision of Bipartite Settlement 1966, Clause 19.3(C) and 19.3(D) which relates to action that should be taken by the disciplinary authority. Learned counsel has placed reliance in the case of ***Sushila Tiwari and Oths. Vs. Allahabad & Oths., Civil Appeal No.5224 of 2012 decided on 16.07.2012***. The workman has also contended that the punishment of dismissal from service is discriminatory in nature and this Tribunal has got power under Section 11-A of the Industrial Disputes Act to alter or modify the impugned order of dismissal by taking lenient view while exercising power under Section 11-A of the Act. Learned counsel has placed reliance to the case of ***M/s Firestone Tyre Vs. Management (1973)1 SCC page 813*** and ***Ramakant Mishra Vs. State of U.P. (1982)3 SCC page 346, Vikram Aditya Pandey, 2013 page 423.***

7. Learned counsel for the management argued that action of the disciplinary authority in passing the dismissal order is in commensurate to the gravity of misconduct proved against the workman. It is also submitted by the learned counsel for the management-bank that role of the Court in the matter of departmental proceedings is very limited and the Court cannot substitute its own views or finding arrived on the basis of the evidence available on record. In the matter of imposition of sentence, the scope for interference by the Court is very limited to exceptional cases. The punishment imposed by the disciplinary authority cannot be subjected to judicial review. In this connection, learned counsel of the bank has drawn my attention towards the judgment of the Hon'ble apex court in the case of ***S.R. Tiwari Versus Union of India (2013(7) Scale Page 417)*** and in the case of ***Depot Manager, APSRTC Vs. Raghudha Shiv Shankar Prasad 2007(1) RSJ Page 331*** and submitted that the workman is not entitled to any leniency.

8. There is no dispute that Section 11-A of the Act empowers this Tribunal to interfere with the quantum of punishment in appropriate cases(see decision of Hon'ble Apex Court in the case of ***Pepsu Road Transport Corporation Versus Rawel Singh, 2008 AIR (SCW) 2099;*** of Punjab & Haryana High Court in the case/s of ***Punjab National Bank Vs. The Presiding Officer, CGIT & another 2012(2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276 and Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996 SCT 436.*** It is fairly settled that discretion is to be exercised judiciously in such cases where order of punishment is quite harsh & disproportionate to the gravity of misconduct of the official concerned on the basis of evidence on record.

9. Perusal of enquiry report, it is crystal clear that claimant/workman was served with the charge-sheets dated 07.09.1991 and subsequent charge-sheet dated 30.06.1993 imputing 48 charges regarding the withdrawal of the amount of the account holder by writing voucher and debited to the account holder and withdrawing the amount from his account by forging the signature of the customer, issuing bogus passbook to the customers allowing advantage to the customer in the forged manner.

10. Enquiry officer V.K. Mahajan has submitted his inquiry report running more than 33 pages, holding that charges maintained as 2, 5, 6, 7, 10, 12, 13, 16, 17, 20, 23, 25, 27, 30, 31, 32, 33, 36 to 40, 43 to 45 were proved against the workman with concluding lines that "**I have carefully considered the evidence of witnesses the various exhibits and the arguments advanced on behalf of the parties and come to the conclusion that modus operandy adopted by charge-sheeted employee was that he debited himself by passing the debit voucher to the account of customers without taking signature/confirmation on the vouchers and credited to his account and withdrawing the amount from his account(beneficiary himself), credited and debited entry in the customers account without any voucher, forged signatures of the customers, issued bogus passbooks to the customers, their running own banking, tempering with the bank's record and allowing overdrafts to the customers. All the exercise was completed by himself in his own writing from posting to passing in the respective books."** The enquiry officer was of the opinion that on the basis of the evidence on record, above mentioned charges are duly proved.

11. Question which arises for consideration is whether punishment of termination is in proportionate to the charges proved against the charge-sheeted employee/workman. Considering the scope of judicial review on the quantum of punishment and referring to various cases in ***Jai Bhagwan Vs. Commissioner of Police & Ors., 2013(4) S.C.T. 607: (2013) 11 SCC 187,*** the Apex Court held as under:—

> ***"What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order on***

punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that it so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court….."

12. Similarly, the Constitution Bench of the Supreme Court in ***State of Orissa and Oths. Vs. Vidyabhushan Mahapatra (1963) Supply 1 S.C.R. 648*** opined that even if the charges which have been proved justified imposition of punishment of dismissal from service this Court may not exercised its power of judicial review. Thus, it is made clear by the Division Bench that power of judicial review is rare jurisdiction confirmed to the Tribunal as well as High Court which could be exercised in rare manner going thorough the facts and the gravity of the charges proved during the course of enquiry by the management. Similarly, the Hon'ble Supreme Court in ***Usha Breco Mazdoor Sangh Vs. Management of Usha Breco and Oths., Civil Appeal No.3551/2008 decided on 29.04.2008,*** has held that:—

"It may not be a correct approach for a superior court to proceed on the premise that an Act is a beneficent legislation in favour of the management or the workmen. The provisions of the statute must be construed having regard to the tenor of the terms used by the Parliament. The court must construe that statutory provision with a view to uphold the object and purport of the Parliament. It is only in a case where there exists a grey area and the court feels difficulty in interpreting or in construing and applying the statute, the doctrine of beneficent construction can be taken recourse to. Even in cases where such a principle is resorted to, the same would not mean that the statute should be interpreted in a manner which would take it beyond the object and purport thereof."

13. It is settled law that punishment of the penalty to be imposed by the disciplinary authority against the charge-sheeted official is to be commensurate with the gravity of alleged misconduct. Undoubtedly, an Industrial Tribunal in terms of Section 11-A of the Act exercises discretionary jurisdiction. Indisputably, discretion must be exercised judiciously and it cannot be based on whims and caprices and should be based to all relevant factors in mind in exercising such jurisdiction. The nature of the misconduct alleged the conduct of the parties the manner in which the enquiry proceedings had been conducted may be held to be relevant factor. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own merits and in given case when the doctrine of proportionality may be invoked.

14. Perusal of charges framed against the accused are relevant for the purpose of deciding proportionality of the punishment. Charges framed and proved against the delinquent employee relates to the withdrawal of the amount and crediting in his own account by forging vouchers of the account holders in the year 1990-1991, where he withdrew a huge amount of the account holder by preparing and forging vouchers and signatures of the account holder by defrauding the bank as well as by demising the credibility of the bank towards their respected accounts-holders. It is also clear that workman in order to cover his misdeeds has also mislead the ledger and also made fictitious entries in the respective accounts.

15. It would be not out of place to mention that workman was not put in trial in criminal case by the Police concerned due to submission of final report relating to the F.I.R. lodged against the workman by the Bank-Management. It is pertinent to mention that criminal case could be not bar for drawing the disciplinary authority against the delinquent official. The Hon'ble Supreme Court in catena of case consequently has held that acquittal in a criminal case could be no bar for drawing up a disciplinary proceeding against the delinquent official. It is well settled principle of law that the yardstick and standard of rule in a criminal case is put from a criminal case while the standard of proof in a criminal case is proved beyond the reasonable doubt whereas in departmental proceeding it has to be proved the probabilities of the alleged charge done by the charge-sheeted employee. Reference may be made to the judgment of Hon'ble Supreme Court in the case of ***Suresh Pathraila Vs. Oriental Bank of Commerce 2007(3) R.S.J. Vol.69, decided on 19.10.2005.*** The order of my learned predecessor regarding the fairness of enquiry has become final in which it is held that enquiry has been conducted in reasonable manner after giving reasonable opportunity to the workman. There is no doubt that workman was employed as a Clerk at the relevant time and he has misappropriated the amount of several accounts-holders during the year 1991 and was found guilty during the course of enquiry, resulting the dismissal by the competent authority of the management. The Hon'ble Supreme Court in the case of ***Regional Manager, U.P.SRTC vs. Hoti Lal, 2003(3) SCC, 605,*** has held in paragraph 10 as under:—

''If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt

with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, the highest degree of integrity and trust worthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding order of dismissal."

This view is further fortified by the Hon'ble Supreme Court in the case of ***Chairman and Managing Director, United Commercial Bank vs. P.C. Kakkar, 2003(4) SCC 364,*** has held in paragraph 14 as under:—

"A Bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager vs. Nikunja Bihari Patnaik, 1996(9) SCC 69. It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

16. The argument advanced by the learned counsel of the charge-sheeted employee is misconceived regarding the proportionality of the punishment imposed by the bank-authority. The case law relied by the learned counsel of the management namely Shushila Tiwari & Oths. Vs. Allahabad Bank is quite distinguishable on facts and proposition of law laid down by the Hon'ble Supreme Court. Hon'ble Supreme Court while dealing with the Clause 19.3(C) and Clause 19.3(D) of the Bipartite Settlement has held that where the charge-sheeted employee was acquitted in criminal appeal, the bank-authority has authority to proceed under Clause 19.3(D) and not under Clause 19.3(C) of the Bipartite Settlement. Case in hand is based on different facts where charge-sheeted employee was neither prosecuted nor acquitted by the competent Court either in trial or in appeal so, applicability of the provision of Clause 19.3(C) and Clause 19.3(D) of Bipartite Settlement is irrelevant. The management is well within his right to punish the charge-sheeted employee after holding due and proper enquiry by giving reasonable opportunity to the workman on the basis of the well reasoned findings given by the enquiry officer.

17. Having gone through the above factual and legal position, this Tribunal is of the considered opinion that punishment of dismissal is in commensurate with the gravity of misconduct committed by the workman who defrauded not only the accounts-holders as well as trust of the accounts-holders towards the management-bank. In such scenario, dismissal of the workman Kailash Kumar is inconsonance with the misconduct/offences committed by him as such, he is not entitled for any relief and petition is liable to be dismissed.

18. The reference is answered accordingly. Let copy of the award be sent to the Central Government for publication as required under Section 17 of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1797.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 109/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2019 को प्राप्त हुआ था।

[सं. एल—12011/23/2005—आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1797.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 109/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2,* Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab and Sind Bank and their workmen, received by the Central Government on 26-09.2019.

[No**.** L-12011/23/2005-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 109/2005
Registered on 19.07.2005

Sh. Guldev Singh Bhandari, S/o Sh. Puran Chand Bhandari. …Workman

Versus

1. The General Manager (Personal) Punjab & Sind Bank, 21, Rajendra Place, New Delhi.
2. The Zonal Manager, Punjab & Sind Bank, Zonal Ofice, Sector 17-B, Chandigarh. …Respondents
3.

AWARD

Passed on:-03.09.2019

Central Government vide Notification No. L-12011/23/2005-IR(B-II) Dated 16.06.2005, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:—

> **"Whether the action of the management of Punjab and Sind Bank, Chandigarh in dismissing Shri Guldev Singh Bhandari from service w.e.f. 23.11.2003 is legal and justified? If so what relief the concerned workman is entitled to and from which date?"**

1. The brief facts of the case are that, the workman joined the Bank on 03.10.1977 and serving the bank honestly with appreciation from the higher authorities for exemplary services rendered for more than 20 years. Certain irregularities were reported at the Bank, Mubarikpur and enquiry is initiated against the workman and other employees separately. Looking the unfair and harassing attitude of the bank officials and Enquiry Officer, the workman sent the legal notice to the Chairman of the Bank, against excesses committed to the workman and saving the Zonal Manager and other officials. Hence, he was transferred to farthest branch of the state of Mandi and placed under suspension in Mandi, whereas Sarabjit Singh, CCC was retained in Mubarikpur. Contrary to the directions of the staff circular no.2569, the workman was suspended, disciplinary action initiated by the Zonal Manager when two Chief Managers were posted in Zonal Office. In terms of the banks instructions contained in circular, Chief Manager is a Disciplinary Authority and Zonal Manager is a Appellate Authority. But without taking any order from the G.M.(Personnel) for change of authority against this instruction contained in Para 521 of the Shastry Award as well as in Para 19.14(now only 14) of the Bipartite Settlements. The workman was issued charge-sheet dated 12.10.2000, 14.10.2000 and 16.10.2000 after 8 months of his suspension by Zonal Office through B.P. Singh Dhaliwal, Sr. Manager(Law) and Mr. Jaspal Singh, Manager(I.R.). The workman has submitted the reply of the above charge-sheets within stipulated time and disciplinary authority did not take any action on the replies submitted by the workman on 12.04.2002. The various requests sent by the workman remained unresponded and without paying any subsistence allowance or reply to the letter/representations. Subsequently, Assistant Zonal Manager issued charge-sheet dated 30.04.2002 through his subordinate officer Mr. N.S. Anand, which was served to the workman on 15.05.2002, after the gap of 18 months from the submission of the reply in response to the earlier charge-sheets. Subsequent charge-sheet dated 30.04.2002 and order of enquiry dated 27.05.2002 was challenged by the workman vide letter dated 24.05.2002 and 06.06.2002 instead of responding the workman's letter, the management proceeded with the enquiry proceedings. However, the workman was paid arrears of the subsistence allowance by making huge deductions out of his meager amount. Subsequent charge-sheet sent by the AGM of the Zonal Office is infructuous for not complying the instructions of the proviso of the Staff Circular No.2569, wherein it is stipulated if action is initiated by the Disciplinary Authority that shall be concluded by the same authority unless, until, the same is not changed by the G.M.(Personnel).

2. The findings of the Enquiry Officer assailed by the workman by alleging the fact that there was a collusion of the Presenting Officer with the Enquiry Officer. The various averments made by the workman and his D.R. during the proceedings of the enquiry were not recorded by the Enquiry Officer. The proceedings of the enquiry, representations made by the workman and his D.R. are not replied by the Zonal Officer. The Enquiry Officer used to keep the venues of the enquiry changing from one place to another, while the workman had been posted at more than 400 kms. From Chandigarh, which cause great prejudice to the workman. In the absence of subsistence allowance which is paid after a long time, the biased and vindictive attitude of the Enquiry Officer made the workman to request the Disciplinary Authority to change the Enquiry Officer and it was brought to the notice of the concerned authority that a criminal case is pending against the Enquiry Officer on the basis of the complaint of the workman, but of no avail to the workman

Enquiry Officer was not changed. During the course of the enquiry, the workman had met with an accident and sustained multiple injuries including fracture of the arm. Consequently, adjournment was sought on the medical ground which was declined by the Enquiry Officer and he ordered to proceed to the house of the workman. Ultimately, D.R. of the workman left the enquiry in protest. The Enquiry Officer with the staff members and Presenting Officer visited the house of the workman to intimidate and to conclude the enquiry and falsely recorded the statements purported to the wife of the workman. It is also alleged that Presenting Officer permitted new and additional documents to be tendered and witnesses examined without giving opportunity to workman for cross-examination of the witnesses and lead his defence causing prejudice to the workman and deprived the right of defence contrary to the terms of Bipartite Settlement. In this connection, workman requested in writing vide Letter dated 02.01.2003 for recalling of the ex parte proceedings and copy endorsed to the Zonal Office but was not replied. It is also averred that P.O. was engaged in disciplinary action by helping the Disciplinary Authority to frame the charge-sheet in spite of that he appeared as a one of the witness and got himself examined as a last witness in the absence of the workman and his representative. The workman has alleged that new documentary evidence, which was produced on 27.12.2002 was sent to the workman later on by the E.O. after tendering and admitting the evidence of the management, thus, putting the workman in disadvantageous position. Immediately, the written briefs sent by the workman was also refused by the Enquiry Officer and the Enquiry Officer gave the one sided findings without taking into account defence of workman as well as his written briefs, holding the guilty to the workman which was accepted by the Higher Authority after sending for few modifications. The modified finding was not sent to the residential address of the workman in spite of the letter dated 14.05.2003 was sent to the concerned authority. The workman was stunned to receive the show cause notice dated 12.09.2003 and without taking into account submissions on the findings of the workman and Disciplinary Authority has given the consolidate penalty of dismissal for all the charges. Workman made appeal to the Appellate-Authority, containing all the facts while conducting enquiry and passing the order of penalty, which was turned down by the Appellate-Authority without applying his mind and dealing with the merit of the case. The workman has prayed that the enquiry conducted by the Enquiry Officer is not just and fair resulting his dismissal.

3. The management has assailed the facts alleged by the workman in his claim petition, saying that workman was afforded full opportunity during the enquiry proceedings, which was conducted as per rules and accordingly on the basis of the report and records, order of dismissal was passed and communicated to the workman. The workman had committed irregularities and was guilty of gross misconduct and caused willful loss and damage to the bank and its customers while working as Clerk-cum-Cashier in the Punjab & Sind Bank, Branch Office, Mubarakpur. The civil as well as criminal liability is stand on separate footings and the Disciplinary Authority is fully competent to take any action against an employee even if he was acquitted from criminal liability. The posting and transfers are the prerogative of the employer and the same were made as per the requirement of the bank. Considering the case, the workman was not deprived of opportunity of appeal as alleged by the workman. The alleged fraud was of complex nature and legal there were about 400 complaints of the customers of the bank amounting Rs.59 lac. The matter was under investigation and consequently, the facts came into the knowledge of the bank, a legal charge-sheet was withdrawn while issuing charge-sheet dated 30.04.2002. The workman was paid entire subsistence allowance as per rules from time to time as per his entitlement. Sh. N.S. Anand(AGM) is fully competent and empowered to issue charge-sheet upon the workman as per the rules applicable in this regard. The enquiry has been conducted in an impartial manner and the workman was given full opportunity to defend himself and the same is not vitiated on any of the grounds mentioned in the claim petition. All the proceedings were duly signed by the workman as well as his defence representatives and the copies of the same were also supplied to them by the Enquiry Officer. The venues of the enquiry was kept at those places which were quite nearer to the place of posting of the workman and convenience of the workman. The workman failed to produce the original prescription as well as x-ray report regarding the alleged fracture in the arm. Even then the venue of the enquiry was shifted to the house of the workman with the consent and facilitate the workman. The workman was even asked to getting medically examined to prove not medically fit to join the enquiry but he failed to produce the medical certificate from the doctor. The allegations against the Enquiry Officer are false and baseless. The appeal filed by the workman was duly considered on merit by the Appellate-Authority and the same was ordered to be rejected on merit. Hence, claim petition may be ordered to be dismissed with costs since no case is made out in favour of the workman.

4. Claimant/workman has filed its replication, and the facts alleged in the replication are same which are alleged in the claim statement as such, it does not require to be mentioned again in order to avoid repetition of the facts.

5. I have heard the argument of learned counsel for the workman Sh. Arun Batra and ld. Counsel for the management Sh. Ranjan Lohan and perused the file carefully.

6. At the very outset, it may be mentioned that this Tribunal vide order dated 05.02.2019 has held that departmental enquiry conducted by the enquiry officer is unfair and against the principle of natural justice, which has not been challenged by the management which has given it finality.

7. In pursuance of the order dated 05.02.2019 regarding fairness of enquiry, opportunity is given to the management to adduce evidence in order to prove the charges against the charged employee Guldev Bhandari.

Management has examined Sh. Nath Singh, enquiry officer and Ms. Renu Sharma, Manager-Establishment, Punjab & Sind Bank, Zonal Office, Chandigarh. Witness Nath Singh has submitted his affidavit Ex.MW1/A and Ms. Renu Sharma has submitted her affidavit Ex.MW2/A. The affidavit submitted by the enquiry officer Nath Singh as evidence reveals that except Para 15 of his affidavit, nothing has been stated in order to proof of charges leveled against the workman. In Para 15, this witness has stated that the enquiry report as well as documents which is on record be read in evidence on behalf of the deponent which are not reproduced with this affidavit in the interest of brevity and to avoid repetition. During the course of cross-examination, witness Nath Singh has admitted that the affidavit filed by him as evidence is prepared by his advocate and he has gone through the contents of affidavit which is correct and true to his knowledge. But this witness has also accepted that it is not prepared as per his instructions, meaning thereby this witness has not gone through the documents which were part and parcel of the enquiry and kept on record. This witness has also accepted that the original documents relied on by him during the course of enquiry was not before him at the time of cross-examination. This witness has also accepted that he has not informed the workman regarding conducting the further enquiry on 27.12.2002 at branch Mubarakpur when all the witnesses Jaspal Singh, Veena Sharma, G.S. Bhaladu, Nirmal Singh Arora, Harbhajan Singh, Joginder Singh, Suresh Kumar and other witnesses-evidences were recorded by him. Nath Singh has also accepted that workman has submitted an application for setting aside the ex parte order which was sent by him to the disciplinary authority as he was not competent to pass any order. This witness has also accepted that he had not gone through the provision and power for disposal of such application, if submitted, during the course of enquiry. Thus, what transpires from the evidence of this witness is that all the witnesses examined in the absence of the workman/charge-sheeted employee without informing the workman for further enquiry on 27.01.2002. This witness has accepted that he has not passed any order regarding the recall of the ex parte order dated 27.12.2002 against workman because he was not competent to pass such order. In fact, this is the reason coupled with other facts enquiry is held to be unfair and against the principle of natural justice.

8. Management witness Renu Sharma has accepted in her evidence that she was not posted at branch officer Mubarakpur when the alleged occurrence of transaction with regard to the present charge-sheet has taken place in the branch. She has also accepted that she was not participant in the enquiry and her knowledge about the enquiry is based on the record of the bank. she has also accepted that going through the few complaints made by the account holders, she came to know that name of workman was not mentioned in any of the complaints. This witness has also accepted that Sh. G.S. Bhaldu, Branch Manager, Bishan Singh and few others is charge-sheeted but she is not aware with the punishment awarded to the above employees. Thus, there is nothing in the evidence of this witness which may be taken as proof regarding the charges framed against the charge-sheeted employee Guldev Singh Bhandari.

9. Workman Guldev Singh Bhandari has submitted his affidavit Ex.WW1/A along with documents P-1 to P-69 which may be read as part of his statement. This witness has stated in his affidavit that other delinquent officials namely Gurmeet Singh Branch Manager, Bishan Singh Officer, D.S. Garh Manager, Sarabjit Singh Clerk-cum-Cashier were reinstated in service and the deponent Sh. Gurmeet Singh Bhalruwere awarded punishment of dismissal from service. This witness has also stated that management on receipt of the legal notice by him approached Central Bureau of Investigation regarding fraud in the Punjab & Sind Bank, Mubarakpur, which is Ex.P65 on record. This witness has also stated that he was given clean cheat by the CBI while rest other persons were charge-sheeted by the premier agency CBI but management was adamant to get him prosecuted and consequently, an application is moved under Section 319 Cr.P.C. for his trial and he was summoned and subsequently acquitted by the CBI-Court Judge, holding that fraud and large scale irregularities had been detected by the accused(workman) who had been arrayed as accused no.4 in the trial. This witness has also mentioned the finding of the CBI Court Judge in Para 47 of the affidavit as follows:-

> ***"The Zonal Office having retained the accused person no.1 on one seat in the same bank did not report the matter to the higher authorities. The accused person no.4 was sought to be made a scape goat by the accused person no.2 and Zonal Office. Hence, the accused person no.4 had written against large scale irregularities in the bank to the Chairman and Managing Director of the bank. It was only after the accused person no.4 on 15.01.2003 has written in detail to the Chairman and Managing Director that the Zonal Office had decided to report the matter to CBI."***

It is pertinent to mention that this witness has not been consciously cross-examined by the management on these points which is stated by him in his affidavit in order to prove his innocence regarding the charges framed against him. Thus, the evidence of workman regarding his innocence on the basis of finding of CBI-Judge in criminal trial has remained uncontroverted.

10. Settled position of law is that if the Industrial Tribunal has come to the conclusion that domestic enquiry is illegal because it was conducted against the principle of natural justice against the workman, respondent-bank is under legal obligation to prove the misconduct/charges against the charged employee before the Tribunal in order to prove the charges against the charge-sheeted workman. It is also fairly settled that in any industrial dispute, the respondent-bank is required to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made of the judgment of Supreme Court in the case of ***Union of India Vs. Sardar Bahadur(1974)4 SCC 618, R.S***

Singh Vs. State of Punjab and other (1999)8 SCC page 90, State Bank of India Vs. Narender Kumar Pandey, Civil Appeal No.263/2013 dated 14.01.2013. But no effort is made by the management by examining the witnesses who were examined during the course of enquiry and who were acquainted with the transactions constituting the charges against the workman.

11. Learned counsel of management has contended that documents which is on record has to be read in evidence as is alleged by the management witness Nath Singh and Renu Sharma in their affidavit submitted as evidence. This argument is contradicted by the learned counsel of the workman, alleging that the evidence which is submitted before holding the enquiry as unfair and against the principle of natural justice could not be read in evidence. Learned counsel further argued that in fact this is a case of no evidence as enquiry officer namely Nath Singh is not a competent witness to prove the transactions allegedly implicating the workman. Learned counsel further argued that being a enquiry officer, his evidence is confined up to the manner and procedure adopted by him to conclude the enquiry as is evident from the affidavit of this witness which is on record. Similarly, witness Renu Sharma did not stated any material facts in order to prove the charges framed against the workman. In this connection, learned counsel of the workman has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of ***Neeta Kaplish Vs. Presiding Officer, Labour Court, arising from Appeal(Civil) 6079 of 1998, decided on 04.12.1998.*** This is the case in which matter was raised and considered by the Hon'ble Court regarding the appreciation of evidence in case enquiry is held improper, illegal and against the principle of natural justice. The Hon'ble Supreme Court has held as follows:—

> ***"The record pertaining to the domestic enquiry would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the management ceased to be "material on record" within the meaning of section 11-A of the Act and the only course open to the management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the management has to suffer the consequences."***

Thus, the proposition of law which emerges from the judgment of Hon'ble Supreme Court is crystal clear and management has to prove the charges on the basis of fresh evidence but management of bank has miserably failed to adduce reliable oral and documentary evidence reason best known to it.

12. There is no dispute that Section 11-A of the Act empowers this Tribunal to interfere with the quantum of punishment in appropriate cases(see decision of Hon'ble Apex Court in the case of ***Pepsu Road Transport Corporation Versus Rawel Singh, 2008 AIR (SCW) 2099;*** of Punjab & Haryana High Court in the case/s of ***Punjab National Bank Vs. The Presiding Officer, CGIT & another 2012(2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276*** and ***Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996 SCT 436.*** The discretion is to be exercised judiciously in such cases where order of punishment is quite harsh & disproportionate to the gravity of misconduct of the official concerned on the basis of evidence on record. Similarly, considering the scope of judicial review on the quantum of punishment and referring to various cases in ***Jai Bhagwan Vs. Commissioner of Police & Ors., 2013(4) S.C.T. 607: (2013) 11 SCC 187,*** the Apex Court held as under:—

> ***"What is the appropriate quantum of punishment to be awarded to a delinquent is a matter that primarily rests in the discretion of the disciplinary authority. An authority sitting in appeal over any such order on punishment is by all means entitled to examine the issue regarding the quantum of punishment as much as it is entitled to examine whether the charges have been satisfactorily proved. But when any such order is challenged before a Service Tribunal or the High Court the exercise of discretion by the competent authority in determining and awarding punishment is generally respected except where the same is found to be so outrageously disproportionate to the gravity of the misconduct that the Court considers it be arbitrary in that it is wholly unreasonable. The superior courts and the Tribunal invoke the doctrine of proportionality which has been gradually accepted as one of the facets of judicial review. A punishment that it so excessive or disproportionate to the offence as to shock the conscience of the Court is seen as unacceptable even when courts are slow and generally reluctant to interfere with the quantum of punishment. The law on the subject is well settled by a series of decisions rendered by this Court….."***

13. Coming to the case at hand, even assuming that finding regarding the charges is left undisturbed the circumstances in which the workman is charged by the Bank did not justify the extreme penalty of his dismissal. This is contended by the learned counsel of workman that the employees who were associated with workman and charged for the misconduct done in same transaction, they were punished and reinstated forthwith as eyewash. In this connection,

learned counsel of workman has drawn my attention towards the judgment of Hon'ble Supreme Court in the case of ***Rajender Yadav Vs. State of M.P. and others, civil appeal no.1334 of 2013, decided on 13.02.2013.*** the principle enunciated in para 12 runs as follow:-

> ***"The doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate."***

14. Conclusively, it may be observed that there is nothing on record which justify the pick and choose punishment of termination/dismissal of workman who has served more than 20 years unblemished service with Bank. The consequence of arbitrary dismissal order served on workman, not only results bad name and reputation but also deprived the workman of his retiral benefits for which he has got statutory entitlement. Hence order of dismissal against the workman is hereby quashed. Admittedly, workman has superannuated hence he is not entitled for reinstatement but entitled for back wages from the date of dismissal upto the date of superannuation with all consequential benefits. He is also entitled to all retiral benefits under the relevant rules for which he is statutory entitled. The management-bank is directed to pay the entire arrears of back wages including pension and other arrears due to him within 2 months from the publication of the award. The reference is answered accordingly.

15. Let copy of the award be sent to the Central Government for publication of the same as required under Section 17(2) of the Act.

A. K. SINGH, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1798.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 38/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2019 को प्राप्त हुआ था।

[सं. एल–12012/26/2008–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1798.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2008) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No*. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 26.09.2019.

[No**.** L-12012/26/2008-IR(B-II)]

SEEMA BANSAL, Section Office

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/38 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF INDIA

The General Manager,
Bank of India,
Mumbai South Zone, IR Deptt., 70-80,
Bank of India Building, 2nd Floor, M.G. Road,
Fort, Mumbai – 400 001.

AND

THEIR WORKMAN

Shri Ramesh P. Ahire,
Bank of India Quarters, C-77, 3rd Floor,
Shri Krishna Nagar,
Borivili [E],
Mumbai – 400 066.

APPEARANCES:

FOR THE EMPLOYER : Mr. L. L. D'souza, Advocate.

FOR THE WORKMAN : Mr. M. B. Anchan, Advocate.

Mumbai, dated the 27th August, 2019.

AWARD PART – I I

1. Government of India, Ministry of Labour & Employment vide its order No. L-12012/26/2008 – IR (B-II) dated 11.06.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this tribunal for adjudication.

> "Whether the action of the management of Bank of India, Mumbai South Zone, Mumbai by awarding the Dismissal to Shri Ramesh P. Ahire from the Bank services is justified ? If not, to what relief the workman Shri Ramesh P. Ahire is entitled to ?''

2. After the receipt of the reference, notices were issued to both parties. In response to the notice, second party workmen filed his statement of claim Ex.9. According to the second party workman, he was working as Hamal-cum-Sweeper at bank Stationery Cell, Zonal Office, South Mumbai Zone. He was served with charge sheet dated 6.9.2006 for the alleged misconduct of over drawing Rs.1,99,952/- from his ATM Card bearing No. 4052 3800 3000 5594. He was regular and permanent employee of Bank of India, Mahim Branch. On his confirmation in the service he was provided with above ATM card by the bank and he was also sanctioned O.D. facility of Rs. Two lakhs to meet his contingent expenses. While he was given ATM card and O.D. facility, he was not given the copy of branch circular No. 97 /172 dated 16.2.2004 referred to in the charge sheet.

3. According to the concerned workman, thereafter he was transferred from Mahim branch to Mumbai Main branch. He was not told to close the O.D. account with Mahim Branch. He was also not told to surrender the ATM card as well as unused cheque leaves. Since there was money in his account, he had withdrawn it by ATM card and as such he has not committed any misconduct as alleged in the charge sheet.

4. According to the concerned workman, a departmental Enquiry held against him is against the principle of natural justice. The preliminary Enquiry was fixed on 28.09.2006. On that day he did not admit the charges. He only told to Enquiry Officer that since the money was there in his account, he has withdrawn the amount since he was not paid salary for 2 months when he was transferred to Mumbai Main branch and for getting his salary when he approached Mr. Chirmurkar, Dy. Manager, Mahim Branch stating that his salary was not credited to his account and that he has not brought the cheque book with him, that time he was told by Mr. Chirmurkar that there was credit of Rs.1000/- towards education money and he can withdraw the said amount by ATM card by using loose cheque leaf. He contents that he has not admitted the charge during the preliminary Enquiry as alleged.

5. It is the contention of the workman that on next date of Enquiry i.e. on 3.10.2006 the Presenting officer has produced 22 documents. The defence representative without going through it & without explaining the contents of the said documents admitted the said documents. All the documents produced in Enquiry are in English and the contents of documents have not been explained to him either by the defence representative or by the Enquiry officer. He was not aware of the terms & conditions written in the said documents. He was not explained the proceeding in Marathi. Enquiry Officer held the Enquiry in English. The Enquiry officer was biased. As such the findings given by the Enquiry Officer are perverse. He is, therefore, asking for reinstatement in service with full back wages and continuity in service. He has raised the dispute and conciliation failed. Therefore, the dispute has been referred to this tribunal.

6. The first party management resisted the claim by filing written statement Ex.10. It is submitted that second party workman while working in bank, Mahim branch was sanctioned clear O.D. limit of Rs. 2 lakhs vide Zonal Office C & IC proposal No. MSZ:C&IC:(CAD): USD:2001-02:499 dated 22.02.2002. His salary was also credited to the clean O.D. account whereby he could withdraw money as per the requirements from his account by using ATM card or by issuing cheques from the cheque book issued to him by the bank. He was then transferred to banks Stationery Cell at

Lower Parel on 30.08.2005 and due to delay on the part of bank his O.D. account was not immediately transferred to Mumbai Main branch and was transferred on 26.10.2005 as per the instructions contained in the branch circular No. 99/91 dated 12.09.2005. As per the bank rules on being transferred from bank's Mahim branch to Stationery Cell at Lower Parel, he was obliged to surrender ATM card and unused cheques leaves of his O.D. account No. 22277 issued to him by the bank, Mahim branch during his tenure at that branch. However, he did not comply with the said but on the contrary used ATM card on 40 occasions at various ATMs during the period from 29.10.2005 to 6.12.2005 to the tune of Rs.2,00,754/-.

7. It is the contention of the first party that the concerned workman has fraudulently withdrew the amount of Rs.2,00,754/- through ATM card during the said period. This came to the notice of the bank when the workman's name appeared in the list of Out of Order Accounts. An investigation was conducted by the investigation department which submitted its report on 2.2.2006. During investigation the workman confessed the above mentioned acts of misconduct and also agreed to repay the same to the bank within the period of 7 days by selling house at Sion or his wife's ornaments. Thereafter the investigation department submitted his investigation report dated 2.2.2006. Even after 7 days the workman did not repay the amount and on 1.2.2006 he deposited only Rs.10,000/- and further reassured to pay the balance amount within 15 days. Thereafter by memorandum Ref. No. MSZ:DA:PKS:159 dated 6.9.2006 he was informed that the disciplinary proceedings should be initiated against him. He was issued charge sheet bearing Ref. No. MSZ:DA:PKS:159 for the acts of misconduct as alleged in the charge sheet. Shri D.M. Khatri, Manager was appointed as Enquiry Officer. The departmental Enquiry was initiated against him where he participated with the defence representative of his choice. Preliminary hearing was held on 28.09.2006 where he was present with his defence representative and asked for adjournment. The adjournment was granted. The next date of hearing was 3.10.2006. On which the workman appeared along with his defence representative Mr. Vinay Tendulkar, office bearer of the union. Enquiry officer on that day enquired from the workman as to whether he received the charge sheet, understood charges and admit charges against him to which he said that he accepted the charges and also stated the reasons for his so doing. The Enquiry officer recorded his statement.

8. It is then contended that the Presenting officer for the bank desired to file the documentary evidence and accordingly filed 22 documents which were taken on record. The defence representative of the workman inspected the said documents and confirmed their genuineness. Thereafter the Enquiry officer submitted his findings on 5.10.2006 on the analysis of evidence on record holding the charges against the workman have been proved. The Enquiry officer issued the Show Cause Punishment Notice bearing No. MSZ:DA:APM:240 dated 25.09.2006 calling him along with defence representative for personal hearing on the proposed punishment and on 5.12.2006 the personal hearing was held where the workman participated along with his defence representative. Thereafter the punishment order bearing Ref. No. MSZ:DA:APM:249 dated 18.12.2006 was issued to the workman and the punishment of dismissal without notice was imposed upon the workman. The workman preferred an appeal against the said punishment order. The Appellate Authority considered the appeal and passed the order confirming the punishment of dismissal without notice awarded to the workman by the disciplinary authority.

9. It is submitted by the first party management that Enquiry is fair and proper and findings are not perverse. Even the punishment awarded is proportionate. It has thus sought the rejection of the reference.

10. This tribunal has passed Award Part – I on 15.2.17 holding thereby that the Enquiry is fair and proper and the Findings of the Inquiry Officer are not perverse. Parties are directed to argue / lead evidence on the point of quantum of punishment.

11. Learned Counsel for the concerned workman filed affidavit Ex.66. However, it appears that thereafter the concerned workman expired on 10.11.7. His legal representatives have been substituted in his stead.

12. Learned Counsel for the concerned workman filed written notes of arguments Ex.70.

13. In view of above, I reproduce the following issues at Ex.13 along with my findings thereon for the reasons to follow:

2.	If yes, whether the punishment is disproportionate and the order of dismissal is unjustified ?	No
3.	If yes, what relief workman, Shri Ramesh P. Ahire is entitled to ?	No
4.	What order ?	As per final order

Reasons

Issue No. 2.

14. Learned Counsel for the concerned workman submitted that so far as quantum of punishment is concerned in another similar case of one Mr. Penkar, sub staff, he was given lesser punishment. However, cross examination of concerned workman in the context clearly blows up his version especially when he had not gone through the charge sheet which was given to Mr. Penkar. Admittedly therefore he did not know what were the charges against Mr. Penkar and in

what circumstances the punishment was awarded to him. Even the copy of order in respect of departmental enquiry and the copy of punishment order in respect of Mr. Penkar have not been produced on record. It cannot be said therefore that in departmental enquiry held against the concerned workman was on the same charges which were charges against Mr. Penkar. No question of discrimination in imposing the penalty can arise in such cases.

15. Even then Learned Counsel for the concerned workman submitted that the tribunal has powers to reduce the punishment awarded to the workman. In the context he has placed reliance on the decision in case of **Workmen of M/s. Firestone Tire & Rubber Co. of India Pvt. Ltd. V/s. M/s. Firestone Tire & Rubber Co. of India Pvt. Ltd. – AIR – 1973 – SC – 1227.**

16. Submission is to the effect that the management while imposing the punishment ought to have considered the previous records, gravity of misconduct or extenuating or aggravating circumstances having found that the management did not take any of the relevant factors into consideration, the tribunal in view of section 11 (a) is empowered to re-appreciate the evidence and examine the correctness of findings thereto. Even section 11 (a) further empowers courts to interfere with the punishment and alter the same.

17. However, in the instant case while passing the Award Part – I, the tribunal has arrived at the conclusion that the findings of the misconduct is based on evidence. Once the finding is based on some evidence, sufficiency of evidence in proof of finding lies beyond the scope of scrutiny of reviewing court.

18. Here in the instant case the charges against the concerned workman which has been proved were to the effect that he fraudulently withdrew an amount of Rs.200745/- through ATM card during the period from 29.10.05 to 6.12.05 and even during investigation the concerned workman confessed the above mentioned acts of misconduct and also agreed to repay the same to the bank within a period 7 days by selling house at Sion or his wife's ornaments. In its notes of arguments, the concerned workman submitted that he was not paid wages for 2 months. He was not having money and therefore he had withdrawn the money for his daily necessities since there is nobody to support him and his family. By his statement the concerned workman had admitted the acts of misconduct and on enquiry it was found that the charges leveled against him are based on evidence.

19. In view of that Learned Counsel for the first party submitted that in a proved case of misconduct and mis-appropriation there does not arise the question of sympathy and in such cases Labour court cannot substitute the penalty imposed by the employer. In the context reliance is placed on the decision in case of Janata Bazar South Kanara Central Co-op. Wholesale Stores and Ors. V/s. Secretary, Sahakari Naukarara Sangh & Ors. – 2007 – SCC – 517.

20. It is thus well settled that the power u/s. 11 (a) is exercised only when the punishment is found to be shockingly dis-proportionate to decree the guilt of the workman. Possession of power is not sufficient. It has to be exercised in accordance with the law. Quantum of amount mis-appropriated is immaterial and even the mis-appropriation of small amount is held grave act of misconduct. If that is the legal position then the misconduct of the concerned workman which resulted in financial loss to the bank is also a grave act of misconduct and it will have to be said that the punishment imposed by the disciplinary authority is proportionate to his misconduct.

21. So far scope of judicial review is concerned, the reliance is placed on the decision in case of Divisional Controller, NEKRTC V/s. H. Mahesh – (2006) – 6 – SCC – 187 wherein it is held that enquiry report is based on the evidence and finding that the delinquent has committed misconduct and mis-appropriated cash. Such findings of the E.O. held not subject to judicial review.

22. Learned Counsel for the first party submitted that the concerned workman was the employee of the bank and therefore in banking business absolute devotion, diligence, integrity and honesty needs to be observed by every bank employee and in particular bank officer. If this is not observed the confidence of the public /depositors would be impaired. According to the Learned Counsel for the first party the amount of money mis-appropriated is immaterial. The fact that it is not an amount mis-appropriated that become a primary factor for awarding punishment on the contrary it is loss of confidence which is a primary factor to be taken into consideration. When a person is found guilty of mis-appropriating funds then nothing wrong in awarding punishment of dismissal. Learned Counsel for the first party in the context seeks to rely on the decision in case of Divisional Controller, KSRTC V/s. A.T. Mane (2006) – SCC – 254.

23. Learned Counsel for the first party also pointed out that the earlier service record of the concerned workman was not unblemished. Earlier he was punished. He refers to punishment order Ex.45 and Ex.46. He was warned earlier and the punishment was also imposed upon him in respect of stoppage of next two increments. He was dismissed twice but the dismissal order was modified. As such his service record was not clear and unblemished. Even considering the charges of misconduct as against him, it can be said that the charges against him were serious which resulted in financial loss of first party and in all circumstances the punishment imposed upon the concerned workman is proportionate.

24. Considering all these facts and the legal position cited above I find that punishment of awarding dismissal to the concerned workman from the bank services is justified and proportionate. Issue No.2 is therefore answered accordingly.

Issue No. 3 & 4:-

25. In view of my findings to issue No.2 and Part – I Award, the workman is not entitled to any relief, so the reference is liable to be rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 27.08.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1799.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नेशनल इन्शोरैस कम्पनी लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 03/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2019 को प्राप्त हुआ था।

[सं. एल–17011/21/2002–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1799.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2003) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of National Insurance Co. Ltd, and their workmen, received by the Central Government on 26.09.2019.

[No. L-17011/21/2002-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 03 of 2003

Parties: Employers in relation to the management of National Insurance Co. Ltd.

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. Ranjay De, Learned Counsel

On behalf of the Management : Mr. Saibal Mukherjee, Learned Counsel

State: West Bengal Industry: Insurance

Dated: 17th September, 2019

AWARD

By Order No.L-17011/21/2002-IR(B-II) dated 29.11.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether any employer-employee relationship exists between the management of National Insurance Co. Ltd. (NICL) Kolkata and the nine disputants viz. S/Shri Amit Ghosh, Satan Bhattacharya, Hrishikesh Balmiki, Susanta Giri, Basudeb Mondal, Tapan Halder, Manick Majumder, Gopal Manna and Abhijeet Dey? If so, whether their claim for absorption in the service of NICL is legal and justified and what relief are they entitled to?"*

2. Above reference has been made by the Central Government at the instance of Eastern Zone General Insurance Employees Union which claims to be only representative trade union functioning in general insurance industry. After receipt of reference notices were issued to the respective parties. The union filed its statement of claim stating therein that

the workmen S/Shri Amit Ghosh, Satan Bhattacharya, Hrishikesh Balmiki, Susanta Giri, Basudeb Mondal, Tapan Halder, Manick Majumder, Gopal Manna and Abhijeet Dey were engaged in the Divisional Office of National Insurance Company Ltd. and performing the job of permanent sub-staff. The union further stated that the nature of job done by above workmen were of perennial nature but the company with mala fide motive to exploit their human labour sometimes called them as contractor labour, sometimes casual labour and sometime badli only to compel them to work in starving wages. The company to camouflage the real state of affairs tried to show a sham contract in conciliation proceeding only to deprive the concerned workmen from their legitimate claim for absorption in service. The industrial dispute was raised by the union as the management did not pay any heed to the workmen's grievances. However, due to the adamant attitude of the company the conciliation ended in failure and the Central Government after receiving failure report referred the matter to this Tribunal for adjudication.

3. The management of National Insurance Co. Ltd. filed its written statement denying all the allegations of the union and pleaded *inter alia* that the reference is not maintainable as no dispute has been properly raised so as to transform the alleged dispute to be industrial dispute. The reference is also not maintainable since there was no subsistence of employer – employee relationship between the company and the persons concerned. The trade union at the instance of which reference has been made is not representative of the workmen thus it has no *locus standi*. It is baseless to state that workmen, S/Shri Amit Ghosh, Satan Bhattacharya, Hrishikesh Balmiki, Susanta Giri, Basudeb Mondal, Tapan Halder, Manick Majumder, Gopal Manna and Abhijeet Dey were engaged by the company. There cannot be any recruitment without the candidate being recommended by the Employment Exchange. Any casual work as a daily wager for few days cannot ripe into regular work and such work is *dehors* of norms of engagement and as such cannot have any validity in the eye of law. The allegation of sham contract is baseless. There is no camouflage of real state of affairs and there is no scope for absorption and contention of the union on this score is totally baseless. The company always complied with the statutory provisions including compliance with the provisions of Contract Labour (Regulation & Abolition) Act, 1970. The claim of workmen is not valid or legal or justified and they are not entitled to any relief whatsoever.

4. A rejoinder was filed on behalf of the union reiterating the pleas made in the statement of claims.

5. On behalf of union WW-01, Shri Samarandra Nath Sanyal, WW-02, Shri Kushal Nag, WW-03, Shri Amit Ghosh have been examined and on behalf of the management MW-01, Shri Utpal Biswas has been examined. Apart from this, documentary evidence have also been filed on behalf of the union which shall be discussed as and when required.

6. I have heard learned counsel for the union as well as for the management. From the submission made by the learned counsel for both the parties following points emerged for determination –

(1) whether the union which espoused the cause of three workmen has got any *locus standi* and

(2) whether there is any relationship of employer and employee between the management of the company and the concerned workmen.

7. In the instant case, it is not disputed that the union has espoused the cause of the concerned workmen but before it can be said to be an industrial dispute, the representative character of the trade union has to be seen. The learned counsel for the management has submitted that the workmen under reference had never been member of the union, therefore, the union has no *locus standi* to espouse their cause. For his argument learned counsel for the management has referred cross-examination of WW-01, Samarendra Nath Sanyal who is Assistant Secretary of Eastern Zone General Insurance Employees Union in which he has admitted that the persons named in the schedule of reference are not members of the union. There is no document to show that they have ever deposited any subscription in favour of the union. They also never worked under him. WW-02, Kushal Nag who is General Secretary of the union, has stated that in written statement it is not mentioned that these persons are members of the union. Even WW-03, Amiit Ghosh, the aggrieved workman had admitted in his cross-examination that he is not member of the union.

8. Thus from the evidence of the union itself it is established that the workmen concerned were not member of the union. There is nothing on record to show that they ever participated in activities of the union. There is nothing on record to show that the union ever passed any resolution espousing the cause of the workmen under reference.

9. In **U.P. State Warehousing Corporation & Anr**. v. **Presiding Officer, Industrial Tribunal & Anr**., CDJ 2013 All HC at page 64 it has been held that

> *"It is settled law that a person who files a claim is required to prove his case. The industrial dispute was raised at the instance of the union, and even though, the provisions of Evidence Act is not applicable in industrial proceedings, nonetheless, the burden of proof is upon the union and its workers to prove their claim before the Labour court."*

Thus burden lies upon the union to prove that the union has representative character and for that it has to show that the concerned workmen are members of the union.

10. Learned counsel for the union has argued that the definition of industrial dispute as given in Industrial Disputes Act, 1947 nowhere says that the cause of the concerned workmen can only be espoused by a union only and also that for espousal of cause it is not necessary that the union should be registered. For his submission learned counsel has relied on **Secretary (Policy), Regional Director (Food) Employees Association** v. **Food Corporation of India & Ors.**, 2001-I-LLJ 203 in which it has been categorically held by the Hon'ble Calcutta High Court that for the purpose of raising an industrial dispute on behalf of the workman it is not necessary that a trade union must be recognized one. Even some of the other workmen are entitled to raise an industrial dispute on behalf of the concerned workmen. The learned counsel has further relied on **Jadhav J.H.** v. **Forbes Gokak Ltd.**, 2005-I-LLJ (SC) 1089 for his submission that the words any person used in definition in Section 2(k) of the Industrial Disputes Act sufficiently shows that for espousal of cause of a concerned workman it is not necessary that union should come forward. Even a group of workmen can espouse cause of the aggrieved workman. In the above case of Jadhav J.H. (supra) Hon'ble the Apex Court has approved its previous decision in **Workmen of Dharmpal Premcand (Saughandhi)** v. **Dharmpal Premchnd (Saughandhi)**, AIR 1966 SC 182 wherein it was held that

> *".....for the purpose of section 2(k) it must be shown that (1) the dispute is connected with the employment or non-employment of a workman. (2) the dispute between a single workman and his employer is sponsored or espoused by a union of workmen or by a number of workmen. The phrase "the union" merely indicates the Union to which the employee belongs even though it may be a Union of a minority of workmen. (3) the establishment had no Union on its own and some of the employees had joined the Union of another establishment belonging to the same industry. In such a case it would be open to that Union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such Union was not exclusively of the workmen working in the establishment concerned."*

11. Further, reliance has been placed by the learned counsel for the union on **Standard Vacuum Refining Company of India Ltd.** v. **their workmen & Anr.**, 1960-II-LLJ 233 where elaborating the principle of espousal, Hon'ble the Apex Court has held with approval of its previous judgment given in **workmen of Demakuchi Tea Estate** v. **management of Dimakuchi Tea Estate**, 1958-I-LLJ 500 that there must be a community of interest with the workmen who are affected and the workmen who have espoused the cause. They must have also a substantial interest in the subject matter of dispute in the sense that the class to which they belong is substantially affected thereby. The test, therefore, to be applied in determining the scope of the words "any person" in Section 2(k) was stated in Dimakuchi case (supra) in the following words:

> *"If, therefore, the dispute is a collective dispute, the party raising the dispute must have either a direct interest in the subject matter of dispute or a substantial interest therein in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It is the community of interest of class as a whole - class of employers or class of workmen – which furnish the real nexus between the dispute and the parties to the dispute. We see no insuperable difficulty in the practical application of this test. In a case where a party to a dispute is composed of aggrieved workmen themselves and the subject-matter of the dispute relates to them or any of them, they clearly have a direct interest in the dispute. Where, however, the party to the dispute also composed of workmen espouse the cause of another person whose employment or non-employment, etc., may prejudicially affect their interest, the workmen have a substantial interest in the subject-matter of dispute. In both such cases the dispute is an industrial dispute."*

12. In another case, **Western India Match Co. Ltd.** vs. **Western India Match Co. Workers Union & Others**, AIR 1970 SC 1205 discussing the necessity of membership of espousing union, Hon'ble the Apex Court has observed that:

> *"If it is insisted that the concerned workman must be a member of theunion at the time of his dismissal, the result would be that if at the period of time there is no union in particular industry and it comes into existence later on then the dismissal of such a workman can never be an industrial dispute although the other workmen here a community of interest in the matter of their dismissal and the cause for which or the manner in which his dismissal is brought about directly and substantially affect the other workmen"*

It has been further clarified that –

> *"The only condition for an individual dispute turning into an industrial dispute as laid down in the case of Dimakuchi Tea Estate (supra) is the necessity of community of interest and not whether the concerned workman was or was not a member of the union at the time of his dismissal."*

13. Thus from the above discussion, it is established that the workmen having a substantial interest in the subject matter of the dispute and having a community of interest can espouse the cause of any person. The community of interest does not depend on whether the concerned workman was a member or not at the time when cause occurred. Now the question is whether the workman concerned have any community of interest with the employees of National Insurance Company Ltd or in other words whether the employees of National Insurance Company Ltd. have substantial interest in

the subject matter of the dispute so as to espouse the cause of the affected workmen. In the instant case the concerned workmen have claimed their absorption in service of National Insurance Company. From the evidence available on record it is not established that apart from these workmen, similar issues have also been raised by other persons also. For community of interest, it is necessary that in case the issue is decided in negative, the interest of other persons are adversely affected, but there is no evidence to show it. The Hon'ble Calcutta High Court in **M/s. Reckit & Colman India Ltd**. v. **Fifth Industrial Tribunal**, 1980 LAB I C 92 has elaborated the representative character of union or the group of workmen. In this case 12 out of 18 Car Drivers had raised the dispute. The Hon'ble Court considered the status of Drivers as to whether they formed a distinct category and were in a position to affect the industry. Endorsing its earlier decision in **Mitsubishi Sholi Kaisha Ltd.** v. **The Tenth Industrial Tribunal of West Bengal**, (1972) 76 Cal WN 753 the Hon'ble Court has held that when a group of workmen are in a position to affect or impede smooth operation of the company by raising a dispute, then it is certainly an industrial dispute. In the instant case, there is nothing on record to show that the workmen under reference formed a distinct category so as to affect or impede the smooth functioning of the company. WW-0-1, Samarandra Nath Sanyal has himself admitted in his cross-examination that there is no specific mention in the written statement of the union that the work process would collapse if the concerned workmen had not worked. This statement of WW-01 in itself is sufficient to demolish the representative character of the workmen under reference, if the test laid down by the Hon'ble Calcutta High Court is applied.

14. In view of above discussion, it is evident that in absence of any resolution of union espousing the cause of the concerned workmen and also in absence of community of interest of workmen with concerned workmen, the union has no *locus standi* to espouse the cause of the concerned workmen and therefore, reference is incompetent.

15. Though learned counsel for the union has also relied on **Hotel Imperial, New Delhi** v. **Chief Commissioner, Delhi**, 1959-II-LLJ 553, but I do not find any applicability of this case in the present one. In above referred case the dispute was regarding mention of name of the union in reference order which was found to be not illegal and which does not invalidated the reference order.

16. Though this reference can be disposed only on the ground that it is incompetent reference because of union having no *locus standi*, but I think it just and proper to deal with the point referred by the Central Government regarding subsistence of relationship of employer and employee between the management of National Insurance Company Ltd., Kolkata and the concerned workmen.

17. While dealing with the relationship of employer and employee, question immediately emerges as to what are the tests to decide the relationship. Hon'ble the Apex Court in **Balwant Rai Saluja & Anr.** V. **Air India & Ors.**, 2014 (9) SCALE 567 = CDJ 2014 SC 694 while determining the relationship of employer and employee has held as follows:

> *"61. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer – employee relationship would include, inter alia, (1) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. As regards, extent of control and supervision we have already taken note of the observations in Bengal Nagpur Cotton Mills case (supra), the International Airport Authority of India case (supra) and the NALCO case (supra)."*

18. The aspect of relationship of employer – employee is a pure question fact and initial burden is on the person who claims the existence of employer – employee relationship. The aspect of burden of proof has been elaborately dealt with by Hon'ble the Apex Court in **Nilgiri Cooperative Marketing Society Limited** v. **State of Tamilnadu and Ors.**, JT 2004 (2) SC 51 wherein it has been held that

> *"47. It is well settled principle of law that the person who sets up a plea of existence of employer employee relationship, the burden would be upon him.*
>
> *48. In N.C. Jhon vs. Secretary, Thodupuzha Taluk Shop and Commercial Establishment Workers' Union & Ors. (1973 Lab. I.C. 398) the Kerala High Court held –*
>
> *"The burden of proof being on the workmen to establish the employer employee relationship an adverse inference cannot be drawn against the employer that if he were to be produce books of account they would have proved employer employee relation."*
>
> *49. In Swapan Dasgupta and Ors. vs. The First Labour Court of West Bengal and Ors. (1976 Lab. I.C. 202) it has been held –*
>
> *"where a person asserts that he was a workman of the Company and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other persons."*

50. The question is whether the relationship between the parties is one of the employer and employee is a pure question of fact……"

19. Further in a case of **Bank of Baroda** v. **Ghemar Bhai Harjibhai Rabary**, 2005 (3) Scale 353 Hon'ble the Supreme Court has observed –

"8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman. The decree of such proof so required vary from case to case."

20. Hon'ble the Allahabad High Court in **U.P. State Warehousing Corporation case** (supra) has lucidly pointed out that where the stand of the union is that the members are employed by the employer and that they being paid wages through them, it is for the union to prove by oral as well as documentary evidence and only then the burden is discharged. Thus from the above case laws it is amply clear that the initial burden to prove the relationship of employer and employee lies on the union/workman and once this initial burden is discharged, onus shifts upon the employer. In the present case, in order to prove relationship of employer and employee, the union has examined three witnesses who have deposed before this Tribunal. WW-01, Shri Samarandra Nath Sanyal has stated in his cross-examination that none of the persons mentioned in the order of reference took part in the check-off system of the company. He has further stated in his cross-examination that the wages are disbursed to the concerned workmen through vouchers. His statement in his cross-examination may be extracted as bellow –

"I am working in the Company as an Assistant. My recruitment was preceded by an advertisement published in the newspaper, followed by written examination and interview. I possess my appointment letter. I get my salary by cheques. Wage negotiations and other benefits are done through settlements. I have not produced any document to show that the management had appointed nine persons named in the schedule of reference. None of the workmen named in the schedule of reference got their salary like myself. I get the benefits of leave, medical allowance, LTC etc. I have not filed any document to show that the persons named in the schedule of reference did ever enjoy the aforesaid benefits."

WW-02, Kushal Nag has stated that no document concerning the workmen has been filed to show that the process of recruitment was followed for appointment of these persons. He has also stated that he gets salary through salary sheets, but no document has been filed concerning payment made to these workmen like him.

21. WW-03, Shri Amit Ghosh has stated as follows:

"…….My name is not registered in the Employment Exchange. I have not filed any paper to show that I have filed any application before the Company for employment. I do not know how the Company is taking on roll its employees. I have not filed any paper to show that the Company appointed me against any vacancy or post."

22. He has further stated that –

"I do not know what is written in the written statement filed by the union. I have not filed any paper to show that the management ever directed me to do any of the work stated by me in my examination in chief. I have not filed any paper to show that I have been asked by the Company to do the work from 9 A.M. to 6 P.M. I know that the employees of the Company receive their wages either by cheque or cash. I have not filed any paper here to show that the employees of the Company receive wages by vouchers."

23. Contrary to the statement of witnesses examined on behalf of the union, the management witness, Shri Utpal Biswas (MW-01) has stated in his examination-in-chief that the concerned workmen were never recruited or engaged by the company. According to Recruitment Rules of the company vacancies are determined before recruitment process starts. He has further stated that the workman, Shri Satan Bhattacharjee and Shri Hrishikesh Balmiki were deployed on casual basis based on casual requirement, but they have not completed 240 days in a calendar year even as per claim statement and also they are not continuing. For rest of the workmen he has categorically denied their engagement and has stated that none of the persons under reference got salary from the company. The testimony of MW-01 finds support from the statement of WW-01, Shri Samarendra Nath Sanyal when he says that he has not produced any document to show that the persons under reference were ever appointed by the company as employee. Similarly, WW-02, Shri Kushal Nag has also stated that no document to show that the process of recruitment was followed for the persons under reference has been filed on record. The employees of the company get through salary sheets, but none of these persons ever received salary like the employees of the company.

24. On behalf of the union copy of certain vouchers have been filed to show that the persons under reference were paid by the company through vouchers, but I have no hesitation to say that these vouchers do not support the case of the workmen. The perusal of these vouchers, Exts. W-01 to W-11 show that payments have been made by the company through these vouchers for supply of water, tea, coffee and also for cleaning and collie charges for the work done by these persons for number days mentioned in these vouchers, sometimes for cleaning, sometimes for removal of garbage,

for supply of water, tea etc. In the conciliation proceeding, except for Shri Amit Ghosh, Shri Satan Bhattacharya and Shri Hrisikesh Balmiki who had been described as casual labour, all other persons under reference had been described as canteen boy in Staff Recreation Club, which do not give them the status of employee/workmen. Except these above mentioned vouchers, there is nothing on record to favour the submissions made by the union.

25. Now again coming to the principles propounded by Hon'ble the Apex Court in **Balwant Rai Saluja** v. **Air India** (supra) the relationship of employer and employee which is pure question of fact can be decided only after taking into consideration the facts as to who is appointing authority, who pays salary, exercises control and supervision over the workmen and who is authority to take disciplinary action against these persons. Applying these tests in the present case, the National Insurance Company Ltd. was neither appointing authority, nor was having control and supervision over the persons concerned. Salary also not paid by the company. Moreover, where the union has asserted the relationship of employer and employee, burden of proof lies on it to prove the same. But, I have no hesitation to say that the union/workmen concerned have miserably failed to adduce evidence in this regard. They have also failed to prove that the workmen concerned ever enjoyed any benefit which was available to other regular employees of the company. Thus, all the basic ingredients of employer and employee relationship are absent in the instant case.

26. In view of foregoing discussion, I come to the conclusion that the reference is bad in eye of law, as the union who has espoused the cause of the concerned workmen does not have *locus standi* and there is no relationship of employer and employee between company and the concerned workmen. Consequently prayer for absorption in service is also not sustainable in law and concerned workmen are not entitled for any relief.

Award is passed accordingly.

Dated, Kolkata,
The 17th September, 2019

Justice RAVINDRA NATH MISHRA, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1800.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ बडौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 10/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09. 2019 को प्राप्त हुआ था।

[सं. एल—12012/205/2004—आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1800.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2005) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 26.09.2019.

[No. L-12012/205/2004-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 10 of 2005

Parties: Employers in relation to the management of Bank of Baroda

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : R. Chattopadhyay, President of the union.

State: West Bengal Industry: Banking

Dated: 18th September, 2019

AWARD

By Order No.L-12012/205/2004-IR(B-II) dated 19.01.2005 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Bank of Baroda, Kolkata Metro Region, Kolkata imposing the punishment of compulsory retirement from the bank's service on Shri Amit Shankar Bhattacharjee is legal and justified? If not, what relief the workman concerned is entitled to?"

2. When the case was taken up for hearing today, none appeared for the management, though the union was represented by its President. It was pointed out by the union that the workman in respect of whose compulsory retirement the matter is pending before this Tribunal has already expired. An application was moved on behalf of the union stating that the legal heirs of Shri Amit Shankar Bhattacharjee (now deceased) are not traceable. Their present location is also not traceable. Hence it is not possible for the union to bring legal heirs on record and in these circumstances the union does not want to continue with the proceeding of this reference.

3. In these circumstances, there exists no dispute as the union does not want to continue the present proceeding.

5. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 18th September, 2019

नई दिल्ली, 26 सितम्बर, 2019

का.आ. 1801.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 24/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.09.2019 को प्राप्त हुआ था।

[सं. एल–12011/102/2015–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 26th September, 2019

S.O. 1801.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of Central *Bank of India* and their workmen, received by the Central Government on 26.09.2019.

[No. L-12011/102/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 24 of 2016

Parties: Employers in relation to the management of Central Bank of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : Mr. C.R. Kanjilal, Vice President of the union

State: West Bengal. Industry: Banking

Dated: 18th September, 2019

AWARD

By Order No.L-12011/102/2015-IR(B-II) dated 28.02.2016 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the action of the management i.e. Central Bank of India in denying driving allowance to i) Shri Jagdeo Prasad, 2) Md. Rafique, 3) Shri Ram Yaya Pandey is legal/and or justified? If not, what relief the workmen are entitled?"*

2. After receiving order of reference notices were issued to the parties, in response to which union has filed its statement of claim stating therein that Shri Jagdeo Prasad, Shri Md. Rafique and Shri Ram Yaya Pandey were recruited by the Central Bank of India management as Sub-staff-cum-Driver on 21st December, 2011. In appointment letters the bank has mentioned that whenever any permanent vacancy of Driver arises in the region, their services will be considered for utilizing as Driver. It is further stated that remittance of cash movement from currency chest at Kolkata Main Office to other branches are being done by hiring two cash vans by the management paying high cost to the contractors. Thus the management is utilizing outsiders for cash movement by outsourcing which is against the bipartite agreement in the industry level. Violation of recruitment policy and guidelines of Central Office of the Bank is apparent. The bank management used to pay above three Drivers in personal capacity. The Sub-staff-cum-Drivers who were recruited 15 years before by the management are being paid Rs.1800/= per month as per Ninth Bipartite Settlement, though they are not driving cars. As per Tenth Bipartite Settlement signed on 25th May, 2015 at Mumbai between Indian Banks Association and National Union of Bank Employees covering service condition of the employees under which special pay with effect from 1st December, 2012 of Rs.2370/= per month has been agreed to be paid. The action of the management in denying driving allowance of Rs.2370/= per month plus Dearness Allowance as per Tenth Bipartite Agreement to the workmen under reference is illegal and unjustified. An industrial dispute arose in respect of denial of driving allowance to the workman concerned at the instance of applicant union and the Central Government has referred this dispute to this Tribunal for adjudication.

3. Despite service of notice, nobody appeared for the bank. Hence the case proceeded ex parte against the management. Ex parte evidence of the union was taken and ex parte argument was also heard by this Tribunal.

4. The basic question involved in this case is whether the workmen under reference who were admittedly recruited as Sub-staff-cum-Driver on 21st December, 2011 are entitled for driving allowance?

5. As per Ninth Bipartite Agreement special pay of Rs.1800/= is payable per month to the Drivers only. The appointment letters filed by the union show that Shri Jagdeo Prasad, Shri Ram Yaya Pandey and Shri Md. Rafique were recruited not as Driver but admittedly as Sub-Staff-cum-Driver. It has been specifically mentioned in the appointment letters of all the above persons that their services would be utilized as Sub-Staff "without any special allowance. However, whenever any permanent vacancy of Driver arises in the region, their services will be considered for utilizing as Driver". This stipulation mentioned in the appointment letter itself shows that the workmen concerned were not appointed as Driver, but as Sub-staff without any special allowance. The union has claimed parity with Shri Arther Baig and Shri Madan Pramanick who are being paid special allowance of Rs.2370/= per month, but the document filed by the union itself shows that they are Drivers whereas Shri Ram Yaya Pandey and Shri Md. Rafique are shown as Peon in their pay slips and Shri Jagdeo Prasad is shown as Daftary.

6. The representative of the union has tried to rely on **Hindustan Lever** v. **Ram Mohan Roy**, (1973) 4 SCC 141 to argue that even if the Drivers are not driving cars but they act as full time packers, even then they are entitled for driving allowance. On this analogy he has submitted that these three persons are entitled for driving allowance even though they are engaged as Peon and Daftary and not driving cars. The union has claimed that non-payment of driving allowance to these persons amounts to violation of condition of service. But, I find no force in the argument as their appointment letters themselves are evidence to show that payment of special allowance was not at all a condition of their service. Admittedly prior to their recruitment as sub-staff on 21st December, 2011 they were working as Personal Drivers meaning thereby they were not employees of the bank. They were recruited in the bank on 21st December, 2011 by issuing the above appointment letters. Thus the conditions mentioned in the appointment letters are deemed to be their condition of service and the appointment letters specifically mention their recruitment as sub-staff without special pay. Hence I am of the view that denial of the management of the bank to pay Driving Allowance to the concerned workmen is not violative of their condition of service and therefore, not illegal and unjustified.

7. The reference is answered accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 18th September, 2019

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